

**(25,587)**

**(25,588)**

**SUPREME COURT OF THE UNITED STATES.**

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**OCTOBER TERM, 1916.**

**No. 757.**

**G. S. NICHOLAS & CO. ET AL., PETITIONERS,**

**vs.**

**THE UNITED STATES.**

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**No. 758.**

**ALEX. D. SHAW & CO. ET AL., PETITIONERS,**

**vs.**

**THE UNITED STATES.**

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**ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF  
CUSTOMS APPEALS.**

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*Certified.*

1594. 1602.

United States Court of Customs Appeals.

No. 1594.

G. S. NICHOLAS & Co. et al., Appellants,

vs.

THE UNITED STATES, Appellee.

No. 1602.

ALEX. D. SHAW & Co. et al., Appellants,

vs.

THE UNITED STATES, Appellee.

TRANSCRIPT OF RECORD.

On Appeal from the Board of United States General Appraisers.

Comstock & Washburn, W. P. Preble, Attorneys for Appellants.

Bert Hanson, Assistant Attorney-General, Attorney for Appellee.

Filed United States Court of Customs Appeals, Nov. 8, 1915.  
Arthur B. Shelton, Clerk.

1

*Petition.*

United States Court of Customs Appeals.

1594.

G. S. NICHOLAS & Co. et al., Petitioners,

vs.

THE UNITED STATES.

To the Honorable the United States Court of Customs Appeals:

Your petitioners, having complied with the statutes in such case made and provided, and being dissatisfied with the decisions of the Board of United States General Appraisers made within sixty days immediately preceding the date hereof in each of the matters set forth and referred to in the annexed Schedule A, which is hereby made a part hereof, as to the construction of the law and facts respecting the classification of such merchandise and the rate of duty imposed thereon under such classification, respectfully pray that the said United States Court of Customs Appeals review the questions of

law and fact involved in said decisions, and for that purpose pray that an order be entered requiring the said Board of Appraisers to return to said United States Court of Customs Appeals the record and evidence taken by them, together with a certified statement of the facts involved in each of the said matters and their decisions thereon. And your petitioners also pray for such other or further orders or relief in the premises as the statutes provide or to the Court shall seem just.

The particulars of the errors of law and fact involved in said decisions of said Board of Appraisers of which your petitioners complain are set forth in the annexed Schedule B. which is hereby referred to and made a part hereof.

Dated, New York, September 3, 1915.

G. S. NICHOLAS & CO.,  
E. LA MONTAGNE'S SONS,  
F. L. ROBERTS & CO.,  
S. S. PIERCE CO.,

*Petitioners,*

By COMSTOCK & WASHBURN,  
*Attorneys, 12 Broadway, New York City, N. Y.*

## 2

## SCHEDULE A.

The following are the importations and entries covered by this proceeding, with the dates thereof, and with such other data as are convenient for purposes of identification:

Date of decisions Jul- 16/15.

Entry No.	Vessel.	Entered.	Protest No.
G. S. Nicholas & Co. (N. Y.).			
254276	Ansonia	Sep. 11/14	772188/75745
261465	Cameronia	Sep. 21/14	772188/75745
244920	Cameronia	Aug. 25/14	772188/75745
217650	Minneapolis	Jul- 21/14	772188/75745
261466	Cameronia	Sep. 21/14	772189/71921
231739	Columbia	Aug. 4/14	772189/71921
E. La Montagne's Sons (N. Y.).			
161267	Caledonia	May 27/14	772177/71691
141933	Wells City	May 9/14	772177/71691
224159	Minnewaska	Jul- 28/14	772177/71691
196225	Minnewaska	Jun- 30/14	772177/71691
232392	Minnehaha	Aug. 5/14	772177/71691
202580	Columbia	Jul- 9/14	772178/65286
217764	Caledonia	Jul- 22/14	772178/65286
244657	Baltic	Aug. 24/14	772178/65286
216731	Minneapolis	Jun- 21/14	772178/65286
196225	Minnewaska	Jul- 1/14	772178/65286

## F. L. Roberts &amp; Co. (Boston).

5551	Scandinavian	Mar. 4/13	766750/4898
6716	Numidian	Jan. 6/13	766750/4898
2448	Scandinavian	May 2/12	766750/4898
4664	Numidian	Dec. 5/12	766750/4898
5022	Numidian	Jan. 15/13	766750/4898

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## S. S. Pierce Co. (Boston).

35166	Franconia	Aug. 31/14	770684/5295
35371	Devonian	Sep. 1/14	770384/5295
36578	Laconia	Sept. 11/14	770684/5295
32690	Arabic	Aug. 6/14	770684/5295
564	Norwegian	Oct. 15/14	770684/5295

## SCHEDULE B.

The Board of United States General Appraisers has confirmed the action of the Collector of the Port in assessing and exacting countervailing duty under the Tariff Act of October 3, 1913 at 3 pence per gallon on plain spirits and 5 pence per gallon on compound spirits exported from Great Britain, thereby making errors of law and fact;

1. In holding that the allowance by Great Britain of 3 pence per gallon on plain spirits and 5 pence per gallon on compound spirits covered by these protests amounted to a bounty or grant upon exportation within the meaning of Section 4, Paragraph E of the Tariff Act of October 3, 1913.

2. In finding or holding that the British Government paid or bestowed, directly or indirectly, some bounty or grant within the meaning of Section 4, Paragraph E of the Tariff Act of October 3, 1913, upon the exportation of the spirits in question.

3. In not finding or holding that the British Government does not, and in these cases did not, bestow directly or indirectly, any bounty or grant within the meaning of Section 4, Paragraph E of the Tariff Act of October 3, 1913, upon the exportation of the spirits in question.

4. In holding that the importations of spirits in question were within the purview of Paragraph E of Section 4 of the Tariff Act of October 3, 1913, and that the additional or countervailing duties of 3 pence per gallon and 5 pence per gallon were rightly and lawfully levied and collected thereon under the terms of said paragraph.

5. In not holding that the importation of spirits in question were not within the purview of said Paragraph E, and that the additional or countervailing duties of 3 pence per gallon and 5 pence per gallon were wrongly and unlawfully levied and collected thereon.

6. In not deciding that if the merchandise was within the provisions of said Paragraph E of Section 4, it was chargeable with a lower rate or less amount of duty than was assessed by the Collector.

7. In disregarding or not giving due weight to the intent of Congress in re-enacting in said Paragraph E the identical words of Section 6 of the Tariff Act of 1909 in the light of the long continued practice of not levying or collecting any such additional or countervailing duty on British spirits since 1860, and also in the light of prior rulings and decisions holding that the allowances in question are neither bounties nor grants upon exportation within the meaning of those terms as used in the tariff laws.

8. In overruling the protests.

9. In not sustaining the protests.

Endorsed: United States Court of Customs Appeals. Filed Sep. 4, 1915. Arthur B. Shelton, Clerk.

*Mandate.*

Mandate issued September 4, 1915.

ARTHUR B. SHELTON, *Clerk.*

*Bond.*

Bond of Philip Comstock in the sum of twenty-five dollars approved by

O. M. BARBER,

Filed Sep. 4, 1915.

5

*Petition.*

United States Court of Customs Appeals.

1602.

ALEX. D. SHAW & CO. AND KNAUTH, NACHOD & KUHNE, Petitioners,

vs.

THE UNITED STATES.

*Countervailing Duty.*

To the Honorable, the United States Court of Customs Appeals:

Your petitioners, having complied with the statutes in such case made and provided, and being dissatisfied with the decisions of the Board of United States General Appraisers made within sixty days immediately preceding the date hereof in each of the matters set forth and referred to in the annexed Schedule A, which is hereby made a part hereof, as to the construction of the law and the facts respecting the classification of such merchandise and the rate of

duty imposed thereon under such classification, respectfully pray that the said United States Court of Customs Appeals review the questions of law and fact involved in said decisions, and for that purpose pray that an order be entered requiring the said Board of Appraisers to return to said United States Court of Customs Appeals the record and evidence taken by them, together with a certified statement of the facts involved in each of the said matters and their decisions thereon. And your petitioners also pray for such other or further orders or relief in the premises as the statutes provide or to the Court shall seem just.

The particulars of the errors of law and fact involved in said decisions of said Board of Appraisers of which your petitioners complain are set forth in the annexed Schedule B, which is hereby referred to and made a part hereof.

Dated, New York, Sept. 9, 1915.

ALEX. D. SHAW & CO., AND KNAUTH,  
NACHOD & KUHNE,  
*Petitioners,*

By W. P. PREBLE,

*Attorney, 150 Nassau St., New York City, N. Y.*

#### SCHEDULE A.

6 The following are the importations and entries covered by this proceeding, with the dates thereof, and with such other data as are convenient for purposes of identification:

Protest No.	Entry No.	Vessel.	Entered.	Goods.	Rate.	C. V. D.
772.173	23,282	St. Paul ....	Aug. 3/14	50 cs. gin.....	5d..	\$7.10
772.211	251,233	Cedric .....	Sept. 8/14	200 cs. gin.....	5d..	28.18
"	247,873	Adriatic ....	Aug. 31/14	300 cs. whiskey.....	3d..	27.45
"	261,645	Cameronia ..	Sept. 23/14	4,100 cs. whiskey.....	3d..	379.71
"	252,517	Saxonia ....	Sept. 8/14	1,000 cs. gin.....	5d..	141.53
"	250,053	New York ..	" 4/14	300 cs. whiskey.....	3d..	27.49
772.212	248,575	Columbia ...	" 1/14	1,800 cs. whiskey.....	3d..	166.72
"	245,062	Baltic .....	Aug. 25 14	100 cs. whiskey.....	3d..	9.19
"	254,190	Celtic .....	Sept. 12/14	500 cs. whiskey.....	3d..	45.81
"	250,646	Cedric .....	" 5/14	250 cs. whiskey.....	3d..	22.63
772.391	217,231	Caledonia ..	July 20/14	100 cs. B. & W.....	3d..	9.25
773.672	245,630	Cameronia ..	Aug. 24/14	50 cs. B. & W.....	3d..	4.56
"	239,469	Ausonia ....	" 13/14	450 cs. B. & W.....	3d..	22.81
773.672	237,793	New York ..	Aug. 11/14	200 cs. gin.....	5d..	28.33
"	292,498	Columbia ...	Aug. 3/14	350 cs. B. & W.....	3d..	32.42
"	253,072	Saxonia ....	Sept. 8/14	200 cs. gin.....	5d..	28.28
773.922	248,727	Columbia ...	" 1/14	300 cs. whiskey.....	3d..	27.37
"	232,828	St. Paul ....	Aug. 3/14	250 cs. gin.....	5d..	35.41
"	245,749	Cameronia ..	" 24/14	200 cs. whiskey.....	3d..	18.25
"	245,933	" ..	" 24/14	250 cs. B. & W.....	3d..	23.05
773.937	275,993	Pannonia ...	Oct. 15/14	300 cs. B. & W.....	3d..	31.33
"	270,414	Adriatic ....	Aug. 3/14	200 cs. whiskey.....	3d..	18.31
"	254,189	Ausonia ....	Sept. 12/14	5,000 cs. whiskey.....	3d..	471.19
"	237,603	Cedric .....	Aug. 11/14	200 cs. whiskey.....	3d..	18.31
"	279,029	Baltic .....	Oct. 19/14	75 cs. gin.....	5d..	10.64
"	248,576	Columbia ...	Sept. 2/11	700 cs. B. & W.....	3d..	63.87
775.118	254,589	Ausonia ....	" 11/14	50 cs. B. & W.....	3d..	4.56

## SCHEDULE B.

The Board of United States General Appraisers has confirmed the action of the Collector of the Port in assessing and exacting duty at 3d on Whiskey, and 5d on Gin, imported from Great Britain, at New York City, by decision rendered on July 16, 1915, T. D. 35,595—G. A. 7758, thereby making errors of law and fact;

1. The Board of United States General Appraisers erred in holding that "an allowance of 3d to 5d is made to the exporter" of Whiskey and Gin respectively from Great Britain; meaning thereby as exporter.

2. The Board erred in holding that such allowance constitutes a bounty or grant within the meaning of paragraph E of Section 4 of the Act of 1913.

3. The Board erred in its determination of the effect of the British Spirits Act and the administration thereof to wit:

That it created a bounty or grant upon the export of spirits like those in question.

4. The Board erred in holding that the purpose of the United States Act was to prevent an unequal competition in our domestic market with the products of other countries.

5. The Board erred in holding that the very purpose of paragraph E is defeated if the spirits in question may be sold in the United States at a less price or at a greater profit than they can in England.

6. The Board erred in not giving due weight to the fact that T. D. 31,490 was before Congress at the time of the passage of the Act of 1913.

7. The Board erred in adopting construction of paragraph E which would be prohibitive upon all importation of the goods in question.

8. The Board erred in overruling the protest enumerated in Schedule A.

9. The Board erred in not sustaining said protest.

Endorsed: United States Court of Customs Appeals. Filed Sep. 11, 1915. Arthur B. Shelton, Clerk.

*Mandate.*

Mandate issued September 11, 1915.

ARTHUR B. SHELTON, *Clerk.*

*Bond.*

Bond of W. H. Amerman in the sum of twenty-five dollars approved by

O. M. BARBER,  
*Associate Judge.*

Filed Sept. 11, 1915.

8

*Return of the Board.*

Board of United States General Appraisers.

No. 1594.

G. S. NICHOLAS &amp; Co. et al., Appellants,

v.

THE UNITED STATES, Appellee.

The petitioners above named, having applied to the United States Court of Customs Appeals for a review of the questions of law and fact involved in a decision of the Board of United States General Appraisers in the above case, and the said Court having ordered the Board to transmit to said Court the record, evidence, exhibits, and samples, together with a certified statement of the facts involved in the case and its decision thereon:

Now, therefore, pursuant to said order, the Board of United States General Appraisers does hereby transmit to said Court the record, evidence, exhibits, and samples in said case, together with a certified statement of the facts involved in the case, and also its decision thereon.

This return specifically comprises the following:

1. Protests 772178/65286, 772188/75745, and 763750/4898 with the reports of the collectors of customs and the United States appraiser thereon;

2. The other protests enumerated in the petition, with the reports thereon, enclosed herewith in a separate envelope;

3. The record of submission;

4. The stipulation of counsel;

5. Exhibits 1 to 11, referred to in the stipulation, forwarded under separate cover;

6. A copy of the Board's decision in question, G. A. 7758 (T. D. 35595).

Witness The Honorable Jerry B. Sullivan, President of the Board, this sixth day of October, A. D. 1915.

D. P. DUTCHER,  
*Chief Clerk.*

G. V. O.

*Countervailing Duty on Spirits.* [SEAL.]

9

*Protest 772178/65286.*

NEW YORK, Sep. 25, 1914.

Hon. Collector of Customs, Port of New York.

SIR: Notice of dissatisfaction is hereby given with, and protest is hereby made against, your ascertainment and liquidation of duties,

and your decision assessing duty under the Tariff Act of October 3, 1913, at five pence or three pence per gallon on so-called countervailing duties.

Said merchandise is not subject to any countervailing or additional duty. No bounty or grant has been directly or indirectly paid or bestowed upon the exportation of this merchandise. The merchandise is not within the purview of the provisions of Par. E. of Section IV, of the Tariff Act of Oct. 3, 1913.

It is alternatively claimed that if the merchandise is held to be within the provisions of Par. E. of Section IV, it is chargeable with a lower rate or less amount of duty than assessed by you.

Each of the above claims is made, and only made, with the proviso and conditionally, that the rate claimed is lower than the rate assessed. The parts of the law referred to in above claims are the only, or the most apt and specific, ones for said merchandise or articles and should control the classification. The above claims severally and collectively are alternatively made under the paragraph or sections referred to, both directly and by virtue of the "similitude" and "component material of chief value" clauses of Par. 386 of the Tariff Act of October 3, 1913.

The offer is hereby made to furnish evidence to the Board of United States General Appraisers, on reasonable notice from them, of the facts involved, and in support of the contentions, herein.

The excess is paid under compulsion, to obtain and retain possession of said merchandise or articles, and you and the government are held liable for the same, and a demand for the repayment thereof and a readjustment or liquidation of the entries in accordance with the above claims is hereby made. The marks and numbers below given are given under duress and without prejudice.

Entry No.	Vessel.	Entered.	Bond No.	Liquidated.
193225	Minnewaska	7/1/14	2	8/26/14
292580	Columbia	7/9/14	474	9/1/14
244057	Baltic	8/24/14	C	9/16/14
216731	Minneapolis	6/21/14	C	9/16/14
217764	Caledonia	7/22/14	1807	9/22/14

Marks and Nos. and various as per entries and invoices.

Respectfully,

E. LA MONTAGNE'S SONS,  
By COMSTOCK & WASHBURN,  
*Attorneys, Attorneys and Counsellors at Law,*  
12 Broadway, New York City.

Endorsed: Custom House, New York. Received Sep. 25, 1914.



*Report of the Collector.*

Jan. 14, 1915.

Respectfully referred to the Board of U. S. General Appraisers for decision.

The merchandise consists of British spirits imported from the United Kingdom of Great Britain and Ireland. Following the instructions contained in T. D. 34463, and 34752, that an export bounty is allowed on plain British spirits, of 3 pence per British proof gallon and 5 pence per gallon on compound spirits, a countervailing duty, equal to the bounty paid, was assessed under paragraph E of section IV, Act of 1913 in addition to the regular rate of duty provided for in schedule H of said act.

The protest was lodged and fee paid within statutory time.

DUDLEY FIELD MALONE, *Collector.*

11

*Protest 772188/75745.*

NEW YORK, Dec. 11, 1914.

Hon. Collector of Customs, Port of New York.

SIR: Notice of dissatisfaction is hereby given with, and protest is hereby made against, your ascertainment and liquidation of duties, and your decision assessing duty under the Tariff Act of October 3, 1913, at five pence or three pence per gallon on so-called countervailing duties on spirits.

Said merchandise is not subject to any countervailing or additional duty. No bounty or grant has been directly or indirectly paid or bestowed upon the exportation of this merchandise. The merchandise is not within the purview of the provisions of Par. E. of Section IV, of the Tariff Act of Oct. 3, 1913. If the merchandise is held to be within the provisions of Par. E. of Section IV, it is chargeable with a lower rate or less amount of duty than assessed by you.

Each of the above claims is made, and only made, with the proviso and conditionally, that the rate claimed is lower than the rate assessed. The parts of the law referred to in above claims are the only, or the most apt and specific, ones for said merchandise or articles and should control the classification. The above claims severally and collectively are alternatively made under the paragraphs or sections referred to, both directly and by virtue of the "similitude" and "component material of chief value" clauses of Par. 383 of the Tariff Act of October 3, 1913.

The offer is hereby made to furnish evidence to the Board of United States General Appraisers, on reasonable notice from them, of the facts involved, and in support of the contentions, herein.

The excess is paid under compulsion, to obtain and retain possession of said merchandise or articles, and you and the government are held liable for the same, and a demand for the repayment thereof

and a readjustment or liquidation of the entries in accordance with the above claims is hereby made. The marks and numbers below given are given under duress and without prejudice.

Entry No.	Vessel.	Entered.	Bond No.	Liquidated.
254276	Anconia	9/11/14	5021	11/11/14
261465	Cameronia	9/21/14	5854	11/13/14
244920	Cameronia	8/25/14	4055	11/14/14
217650	Mineapolis	7/21/14	C	12/3/14

Marks and Nos. various as per entries and invoices.

Respectfully,

G. S. NICHOLAS & CO.,  
By COMSTOCK & WASHBURN,  
*Attorneys, Attorneys and Counsellors in Law,*  
12 Broadway, New York City.

Endorsed: Custom House, New York. Received Dec. 11, 1914.

*Report of the Collector.*

Jan. 14, 1915.

Respectfully referred to the Board of U. S. General Appraisers for decision.

The merchandise consists of British spirits imported from the United Kingdom of Great Britain and Ireland. Following the instructions contained in T. D. 34466, and 34752, that an export bounty is allowed on plain British spirits, of 3 pence for British proof gallon and 5 pence per gallon on compound spirits, a countervailing duty, equal to the bounty paid, was assessed under paragraph E of section IV, Act of 1913 in addition to the regular rate of duty provided for in schedule H of said act.

The protest was lodged and fee paid within statutory time.

DUDLEY FIELD MALONE,  
*Collector.*

*Protest 766750/4898.*

BOSTON, Oct. 2, 1914.

Hon. Collector of Customs, Port of Boston.

SIR: Notice of dissatisfaction is hereby given with, and protest is hereby made against, your ascertainment and liquidation of duties, and your decision assessing duty at 5 pence or 3 pence per gallon, or other rate or rates, on certain spirits, as so-called countervailing duties, covered by entries below named. The ground of objection under the Tariff Act of October 3, 1913, is that said merchandise is not subject to any countervailing or additional duty. No bounty or grant has been directly or indirectly paid or bestowed upon the exportation of this merchandise. The

merchandise is not within the purview of the provisions of Par. E. of Section IV, of the Tariff Act of Oct. 3, 1913.

It is alternatively claimed that if the merchandise is held to be within the provisions of Par. E. of Section IV. it is chargeable with a lower rate or less amount of duty than assessed by you.

The above claims severally and collectively are alternatively made under the paragraphs or sections referred to both directly, and by similitude and component material or otherwise as provided in Par. 386, and by the rules as to the ordinary meaning of words, the statutory meaning, commercial designation, meaning or usage, controlling force of chief use and chief component in value, and by all statutory, judicial or other rules for the construction of the law; hereby reserving all questions of law and fact. Refund should be made of additional duties, assessed under Section 3, or otherwise, on goods decided under this protest to be free of duty or dutiable at specific rates, in which case said additional duties do not attach. This protest is intended to apply to all merchandise or articles included in the entries and importations referred to herein, and to the payments thereon. The entry numbers and other marks, numbers and data, below given, are given under duress, without prejudice, to aid you, and not to limit this protest. The excess is paid under compulsion, to obtain and retain possession of said merchandise or articles and you and the government are held liable for the same, and a demand for the repayment thereof, and for a readjustment or liquidation of the entries in accordance with the above claims, is hereby made.

Vessel.	Entered.	Entry No.	Bond No.	Re-Liquidated.	Marks and Nos.
S/S Scandinavian.....	Mar. 4/13	—	5551	Sept. 2/14	
S/S Numidian.....	Jan. 6/13	—	6716	Sept. 2/14	addd \$409/14
S/S Scandinavian.....	May 2/12	—	2448	Sept. 10/14	C \$1/5
S/S Numidian.....	Dec. 5/12	—	4664	Sept. 11/14	
S/S Numidian.....	Jan. 15/13	—	5022	Sept. 11/14	addd \$1/75

Respectfully,

F. L. ROBERTS & CO.,  
By COMSTOCK & WASHBURN AND  
CARROL E. PILLSBURY,  
*Attorneys for Importers, 47 Winter St., Boston.*

Endorsed: Auditor's Office, Custom House, Boston. Received Oct. 2, 1914.

On the within protest No. 4898, of F. L. Roberts & Co., the importers request a hearing at New York, and that notices be sent to Comstock & Washburn, 12 Broadway, New York City.

Endorsed: Office of U. S. Appraiser, Boston, Mass., Oct. 28, 1914.

Endorsed: Custom House, Boston, Paid Oct. 24, 1914. G. W. B., Asst. Coll.

Endorsed: Naval Office, Boston. Oct. 24, 1914.

*Letter Submitting Protest 4898.*

Treasury Department, United States Customs Service.

OFFICE OF THE COLLECTOR,

BOSTON, MASS., Nov. 3, 1914.

The Board of U. S. General Appraisers, New York, N. Y.

GENTLEMEN: I submit herewith the protest, No. 4898, with accompanying invoices, of F. L. Roberts & Co., against the assessment of so-called countervailing duty on certain spirits, imported  
15 by them in the vessels, and entered for warehouse as follows:

ex "Scandinavian",	entered Mar. 4, 1913, invoice 1059.
ex "Numidian",	entered Jan. 6, 1913, invoice 853.
ex "Scandinavian",	entered May 2, 1912, invoice 475.
ex "Numidian",	entered Dec. 5, 1912, invoice 1311.
ex "Numidian",	entered Jan. 15, 1913, invoice 2290.

The protestants claim that "The ground of objection under the Tariff Act of October 3rd, 1913, is that said merchandise is not subject to any countervailing or additional duty. No bounty or grant has been directly or indirectly paid or bestowed upon the exportation of this merchandise. The merchandise is not within the purview of the provisions of Par. E, of Section IV, of the Tariff Act of Oct 3, 1913.

"It is alternatively claimed that if the merchandise is held to be within the provisions of Par. E, of Section IV, it is chargeable with a lower rate or less amount of duty than assessed by you."

The importers request hearing at the port of New York.

Countervailing duty was assessed in liquidation under T. D. 34466, the warehouse entries in question having been reliquidated for the purpose of assessing the countervailing duty on the British spirits still in warehouse on June 24, 1914.

The requirements of Par. N, Section III of the Act of October 3, 1913, have been complied with by the protestants so far as the time limit for filing protest is concerned, and so far as the payment of fee is concerned, as defined in T. D. 34541, Par. 2.

A return of the invoices is requested.

Respectfully,

O. PERRY,  
*Special Deputy Collector.*

One set of enclosures.

Endorsed: U. S. Gen. Apprs. Received Nov. 4, 1914.

16

*Answer to Protest 4898.*

Treasury Department, United States Customs Service.

## OFFICE OF THE APPRAISER OF MERCHANDISE,

PORT OF BOSTON, MASS., October 28, 1914.

The Collector of Customs, Boston, Mass.

SIR: Replying to protest No. 4898 of F. L. Roberts & Co., against assessment of countervailing duty on certain merchandise imported by them as below, I beg to state as follows:

S/S	Date of entry.	Invoice.	Entry.	Bond.
"Scandinavian",	March 4, 1913,	1059	8344	5551
"Numidian",	June 6, 1913,	853	20706	6716
"Scandinavian",	May 2, 1912,	475	16359	2448
"Numidian",	Dec. 5, 1912,	1311	48987	4664
"Numidian",	Jan. 15, 1913,	2290	1815	5022

The merchandise subject of protest consists of whiskey and rum, returned for duty at the rate of \$2.50 per proof gallon under Par. 300 of the Tariff Act of 1909. No countervailing duty was reported by this office.

Papers returned herewith.

Respectfully,

W. T. HODGES, *Appraiser.*

Enclosure.

*Record of Submission.*

The U. S. General Appraisers.

In the Matter of Protests 772177/8 and 772188/9, of E. LA MONTAGNE'S SONS et al.

Board 3.

NEW YORK, April 19, 1915.

Present: General Appraiser Hay.

Appearances: Comstock & Washburn (by Albert H. Washburn) for the importers; J. J. Mulvaney, for the United States.

The protests are submitted on a statement of facts filed to-day. Thirty days granted to each side to file briefs, and the case continued until the May Term for argument.

May 24, 1915, submitted on oral argument.

*Stipulation.*

Before the Board of U. S. General Appraisers.

## Board 3.

In the Matter of Protests 772188/9 of G. S. NICHOLAS & Co., 772177/8 of E. La Montagne's Sons, 770684 of S. S. Pierce Co., 766750 of F. L. Roberts, 770830 of Sibley Warehouse Co., 776200 of Francis Draz & Co., 776937 of Francis Draz & Co., 777474 of E. & J. Burke, Ltd., 775120 of Mumm Champagne & Importation Co., on Countervailing Duty on British Spirits.

It is hereby stipulated and agreed by and between the Assistant Attorney General for the United States and counsel for the protestants as follows:

1. Annexed hereto and marked exhibit 1 are copies of the Statutes of the United Kingdom of Great Britain and Ireland as follows:

(a) An Act to Grant Excise Duties on British Spirits and on Spirits imported from the Channel Islands, of August 28, 1860 (23 and 24 Vict. Cap. 129);

(b) Section 12 of Chapter 98 of 28 and 29 Vict., 1865;

(c) An Act to Consolidate and Amend the Law Relating to the Manufacture and Sale of Spirits, August 25, 1880, (43 and 44 Vict.) usually cited as the "Spirits Act of 1880;"

(d) Sections 16 and 17 of 44 and 45 Vict. Cap. 12, 1881;

(e) An Act to grant Certain Duties of Customs and Inland Revenue, of August 6, 1885 (48 and 49 Vict. Cap. 51);

(f) An Act to Amend the Law Relating to the Customs and Inland Revenue and for other Purposes Connected with the Public and Expenditure, of August 26, 1889 (52 and 53 Vict. Cap. 42), usually cited as the "Revenue Act of 1889;"

(g) An Act to grant Certain Duties of Customs and Inland Revenue, to Repeal and Alter other Duties, and to Amend the Law relating to Customs and Inland Revenue and to make Provision for the Financial Arrangements of the Year, of May 30, 1895 (58 Vict. Cap. 16);

(h) An Act to grant Certain Duties of Customs and Inland Revenue, to Repeal and Alter other Duties, and to Amend the Law relating to Customs and Inland Revenue and to make Provision for the Financial Arrangements of the Year; of July 22, 1902 (2d Ed. VII, Cap. 7);

(i) An Act to Amend the Law relating to Customs and Inland Revenue and for other Purposes Connected with Finance, of August 4, 1906 (6th Ed. VII, Cap. 20);

2. Formal proof of the enactment of the acts above mentioned is waived, the copies annexed hereto, for the purpose of these protests, to have the same force and effect as if legally and formally proven.

3. It is agreed that the said acts contain all the statutory law and enactments of the United Kingdom of Great Britain and Ireland with reference to the issues involved in the protests herein, except as may appear in the publications mentioned in the next succeeding paragraph.

4. Annexed hereto are copies of Ham's Year Book, Volume 2, Excise Warehousing with Regulations, 1914, published by special permission of the Honorable Commissioners of Customs and Excise; also Harper's Manual for the Wine and Spirit Trade, 1914; also copy of the Imperial Tariff of 1913 as published by Eyre & Spottiswoode, Ltd., by authority. These publications may be marked Exhibits 2, 3 and 4 for identification respectively. Such portions thereof as may be relied on by either party shall be and become part of the record, subject to objection as to competency, materiality and relevancy. It is further agreed that such portions so incorporated in the record may, so far as competent, material and relevant, have the same force and effect as if legally and formally proven, and as such may be referred to by either party upon the argument.

5. Annexed hereto and marked Exhibit 5 is the statement bearing date of February 3, 1911, made by the British Ambassador to the Secretary of State of the United States submitting the position of the British Government with respect to the imposition of countervailing duties, in its legal aspects.

19 Annexed to such statement and forwarded as part thereof is a statement made by George Young, Secretary in Charge of Commercial Affairs attached to the British Embassy in Washington, setting forth at greater length the contentions of the United Kingdom with respect to the legal aspect of such countervailing duties.

6. Annexed hereto and marked Exhibit 6 is a statement bearing date of March 17, 1911, made by the British Ambassador, having annexed thereto other statements designated respectively Annex A, Annex B, Annex C, Annex D, Annex E, and Annex F.

7. Annexed hereto and marked Exhibit 7 are statements made by Rugus Fleming, United States Consul at Edinburgh, Scotland, bearing date of March 23, 1910; April 28, 1910; June 7, 1910, and August 5, 1913, respectively.

8. Annexed hereto and marked Exhibit 8 is the statement of the British Government dated March 19, 1914, to the effect that no change has been made since 1911 either in the amount or nature of the allowance paid by the United Kingdom on the export of British spirits.

9. Annexed hereto and marked Exhibit 9 is a true copy of the statement of the British Ambassador to the Secretary of State for the United States bearing date of May 1, 1914.

10. Annexed hereto and marked Exhibit 10 is a true copy bearing date of April 18, 1914, of a communication from the Commissioners of Customs and Excise of the United Kingdom addressed to the Secretary to the Treasury.

11. Annexed hereto and marked Exhibit 11 is a true copy of



statements made by one Peter Dawson and by the Whiskey Exporters' Association.

12. The issue involved in these protests received the consideration of the Treasury Department of the United States in T. D. 31229, T. D. 31490, and T. D. 34466.

13. With respect to exhibits 5 and 11, inclusive, above referred to, it is agreed that if the persons whose names are signed thereto were sworn and permitted to testify orally, they would testify to such of said statements as purport to be statements of fact, but the right is reserved by both parties, to object to such statements on the ground of incompetency, immateriality and irrelevancy in the same manner as such objections might be urged if the witnesses were present and testifying. The portion of all such statements which are argumentative merely, are admitted as arguments only, without objection, it being conceded that such portion of all said statements is a presentation of the position taken by the British Government and British manufacturers, and the United States Consul at Edinburgh with respect to the legal aspects of the case.

Dated New York, N. Y., May 7, 1915.

BERT HANSON,

*Assistant Attorney-General,  
Attorney for the United States.*

J. J. M.

COMSTOCK & WASHBURN,

*Attorneys for Protestants.*

FRANCIS E. HAMILTON,

*Attorney for Protestants.*

It is agreed that protests 772211/2, 773937 of Alex. D. Shaw, 772173, 772391, 773672, 773922, 775118, Knauth, Nachod & Kühne, be included in above stipulation.

W. P. PREBLE,

*Attorney for Protestants.*

Endorsed: U. S. General Appraisers. Received May 17, 1915.

*Decision of the Board.*

(T. D. 35595—G. A. 7758.)

United States General Appraisers.

NEW YORK, July 16, 1915.

In the Matter of Protests 772188, etc., of G. S. NICHOLAS & Co. et al.,  
Against the Assessment of Duty by the Collectors of Customs at  
the Ports of New York, etc.

Before Board 3.

HAY, General Appraiser:

The merchandise which is the subject of these protests is whiskey, gin, vermuth, champagne, rum, and still wine. No question is



raised as to the correct classification of this merchandise.

21 The only question arising grows out of the imposition by the collector of the countervailing duty provided for in paragraph E of section 4 of the Act of 1913, which reads as follows:

Par. E. That whenever any country, dependency, colony, province or other political subdivision of government shall pay or bestow, directly or indirectly, any bounty or grant upon the exportation of any article or merchandise from such country, dependency, colony, province, or other political subdivision of government, and such article or merchandise is dutiable under the provisions of this act, then upon the importation of any such article or merchandise into the United States, whether the same shall be imported directly from the country of production or otherwise, and whether such article or merchandise is imported in the same condition as when exported from the country of production or has been changed in condition by remanufacture or otherwise, there shall be levied and paid, in all such cases, in addition to the duties otherwise imposed by this act, an additional duty equal to the net amount of such bounty or grant, however the same be paid or bestowed. The net amount of all such bounties or grants shall be from time to time ascertained, determined, and declared by the Secretary of the Treasury, who shall make all needful regulations for the identification of such articles and merchandise and for the assessment and collection of such additional duties.

This paragraph originated in section 5 of the Act of 1897, and was copied literally into section 6 of the Act of 1909, and into paragraph E of the Act of 1913, above quoted. No question was raised as to the manner of the application of this paragraph, but its applicability to the merchandise which is the subject of this protest is the question before us. The net amount of the bounties or grants which it is claimed by the Government arise out of the English law in the exportation of the merchandise in question has been ascertained by the Secretary of the Treasury, and the regulations made by him for the identification of the merchandise in question have all been complied with. The solitary question is, Do the English statutes provide for the payment or bestowal by the British

22 Government either directly or indirectly of any bounty or grant upon the exportation of the merchandise in question?

The case is submitted upon a stipulation which, together with exhibits attached thereto, and which become thereby a part of the stipulation, constitutes the record of facts upon which the case must be decided. Among these exhibits is the English Spirits Act and the regulations under which it is administered, together with the diplomatic correspondence and many papers and documents relative thereto. It would be difficult to abridge these documents, and to set them out in extenso would tend only to confuse the issue. So far as the decision of this case is concerned it seems to us only necessary to state that under the English law and its administration, spirits of the kind here under consideration are subject to an excise duty of 14s. 9d. per gallon; that such spirits when exported from England are not only relieved of this duty but in addition there is

an allowance made of 3d. per gallon upon plain spirits and 5d. per gallon upon compound spirits. It is also provided that where, under certain circumstances, spirits may be used in the arts, or manufacture, or in universities, or colleges, and when used as naval or ship's stores, they shall be exempt from duty and that in some of these cases an allowance of 3d. or 5d. may also be made. It is not the province of a court of the United States to construe a foreign law, and it is a little difficult to determine from the British statutes in question the exact status of spirits that are not domestically consumed nor exported, but are used in the arts, or industries, nor do we conceive that to be necessary. The fact remains that all spirits of the class under consideration, manufactured and consumed in the ordinary way in Great Britain, that is, as a potion or a beverage, bear an excise tax of 14s. 9d. per gallon; that all spirits of the same class that are exported are relieved from the payment of this excise tax, and, in addition thereto, an allowance of 3d. to 5d. is made to the exporter. Does this constitute a bounty or grant within the meaning of paragraph E? is the question for us to decide,

23 and, if it does, is that construction to be changed by the fact that for certain limited domestic uses some concession is made to the manufacturer of the spirits?

The policy or purpose of the British law is not a subject with which we can deal. In the wisdom of the British lawmakers the complicated provisions of this statute were doubtless deemed necessary and advisable to safeguard their revenues, and whether the purpose of these provisions was to create a bounty or grant upon the export of spirits like those in question is not a matter into which we may inquire. Our inquiry is: Is such the effect of this statute and its administration?

We are urged by counsel in the decision of this question to consider the economic policy of Great Britain and the United States. While it is not the function of the judicial office to enter, in a controversial sense, into the economic policy of the country, it is eminently proper in determining the meaning of statutes to inquire into the history of the times which may indicate the policy of Congress in its enactment. It is true that for more than a generation the policy of Great Britain has been that of free trade and that for as long a time the settled policy of the United States has been that of protection. In the act of 1897, where the provision here under consideration first appears, this policy of protection was affirmatively stated in the title. While we may not inquire into the purposes but only the effect of a foreign law in determining the meaning of a statute of the United States which it is our function to construe, we may with perfect propriety look to its purpose. Section 5 of the Act of 1897 is undoubtedly a part of the national policy as declared in the title of the law "to encourage the industries of the United States." Its purpose was to prevent an unequal competition in our domestic market with the products of other countries, and in

24 determining its application to any state of facts this policy should be kept in mind, for its reenactment by Congress with-

out any change of verbiage indicates the adoption of the same general policy to this extent at least.

With great learning and equal skill the attorney for the importer has marshaled historic facts and precedents to convince us that it is our duty to place a narrow and technical construction upon the use of the word "bounty" and to indicate to us that under this technical meaning the circumstances out of which this case arises do not constitute a bounty. While it is true that words, the meaning of which have been definitely settled by judicial decision, should when used in a statute be given the meaning thus settled, we should not give to words used in a statute a narrow or technical meaning if such would defeat the very purpose of the law when a broader and more liberal definition would effect that purpose. The law regards the substance, not the shadows—acts done, not the names by which these acts are designated.

It seems quite clear to us that if the spirits in question may be sold in the United States at a less price or at a greater profit than they can in England, the very purpose of paragraph E is defeated. If the manufacturer of these spirits can sell them for consumption in England only after payment of an excise tax of 14s. 9d., and can sell them in the United States without paying this tax and receive the additional allowance of 3d. or 5d. per gallon, he can sell them in the United States for a less price than he can in England, or if he sells them at the same price he will derive a larger profit. Many years ago when this paragraph was new to tariff laws it received a construction by this board which is, we think, the view we have just taken. Robert E. Downs's case, G. A. 4912 (T. D. 22984). This board there held a complicated sugar law of Russia to constitute a bounty or grant within the meaning of the paragraph of law under consideration in the case at bar. The board in that case said:

25 Our conclusion, therefore, is that a bounty or grant, within the meaning of Section 5 of our tariff act, has been paid or bestowed by the Russian Government upon the exportation of this sugar, so as to work a benefit or advantage to the Russian sugar exporter as follows:

First. Upon the exportation of the sugar, the Government remitted or refunded the excise tax due thereon, or otherwise canceled the indebtedness of the sugar manufacturer, so that he was enabled to place his product upon the market free from the burden of either the regular or additional excise tax.

Second. The certificate which the Government issued to him upon the exportation of his sugar had a substantial market value, and was transferable, and operated as a premium, grant, bonus, or reward.

This language it occurs to us applies to the case at bar. The spirits in question are exported free from the excise tax, while if sold for consumption in Great Britain they are burdened with the excise tax. In addition, if sold for export an allowance of 3d. or 5d., depending upon the kind of spirits, is made to the exporter, which he does not receive if sold for domestic consumption. This places the merchandise in question in the market of the United States upon better

terms than it enters the market of Great Britain. This fact itself in our judgment constitutes a bounty or grant within any reasonable meaning of those words. Robert E. Downs's case, *supra*, finally reached the Supreme Court, where the decision of the Board of General Appraisers was affirmed. *Downs v. United States* (187 U. S. 496). While the method by which the Russian domestic tax was levied and collected differed materially from that of the British tax here under consideration, the very language of the learned justice who decided the case fits, we think, the circumstances of the case at bar:

It is practically admitted in this case that a bounty equal to the value of these certificates is paid by the Russian Government, and the main argument of the petitioner is addressed to the proposition that this bounty is paid, not upon exportation, but upon  
26      production. The answer to this is that every bounty upon exportation must, to a certain extent, operate as a bounty upon production, since nothing can be exported which is not produced, and hence a bounty upon exportation, by creating a foreign demand, stimulates an increased production to the extent of such demand. Conversely, a bounty upon production operates to a certain extent as a bounty upon exportation, since it opens to the manufacturer a foreign market for his merchandise produced in excess of the demand at home. A protective tariff is the most familiar instance of this, since it enables the manufacturer to export the surplus for which there is no demand at home. If there were no tariff at all, and the expense of producing a certain article at home were materially greater than the expense of producing the same article abroad, there would be none produced, and, of course, none to export. But with the aid of such tariff production would be stimulated, and might become so much greater than the home demand that a manufacturer would look to foreign markets for his surplus. In the case of Russian sugar the effect of the import duties is much enhanced by the fact, that the supply of free sugar from the home market being limited, the selling price is very remunerative, and each producer has therefore an interest in placing as much sugar as he can on the home market; and as the total amount of free sugar is distributed among all the manufacturing in proportion to their entire production, it may become to their interest to export their surplus even at a loss, if such loss can be compensated by the profits on sugar sold in the home market. This would make the tariff a bounty upon exportation, but a mere incident to its operation upon production. But if a preference be given to merchandise exported over that sold in the home market, by the remission of an excise tax, the effect would be the same as if all such merchandise were taxed, and a drawback repaid to the manufacturer upon so much as he exported. If the additional bounty paid by Russia upon exported sugar were the result of a high protective tariff upon foreign sugar, and a further enhancement of prices by a limitation of the amount of free sugar put upon the market, we should regard the effect of such regulations as being simply a bounty upon production, although it might incidentally and remotely foster an increased exportation of sugar; but where in

27 addition to that these regulations exempt sugar exported from excise taxation altogether, we think it clearly falls within the definition of an indirect bounty upon exportation.

Again, the learned justice sums up the whole matter in this brief sentence:

When a tax is imposed upon all sugar produced, but is remitted upon all sugar exported, then, by whatever process, or in whatever manner, or under whatever name it is disguised, it is a bounty upon exportation.

It seems scarcely necessary for us to consider the contention of the importer's counsel based upon the departmental construction given to this paragraph of the law in the Assistant Secretary's letter (T. D. 31490) and the customs memoranda which is made exhibit 9 in this case. Upon that question, in the case of United Cigar Stores Co., G. A. 7026 (T. D. 30643), we said:

It is true that departmental construction, like long acquiescence, gives meaning to a statute which should not lightly be disturbed by the courts. \* \* \* We think, however, it will not be disputed that, if one of the executive departments had placed upon a statute a construction in conflict with the judicial interpretation of that statute (which is not true in the case at bar), Congress, in reenacting that statute, would be held to have enacted it with the meaning given to it by the courts rather than that given to it by the department.

So we conclude in the case at bar that paragraph E having been, in our judgment, definitely construed by this board in *Downs' case*, supra, and by the Supreme Court in *Downs v. United States*, supra, it was the construction there given the law which Congress is presumed to have adopted rather than that given it in the brief letter of the Assistant Secretary of the Treasury.

We have not thus far considered the only respect in which the facts of the case at bar radically differ from those of the sugar bounty case (*Downs v. United States*, supra). In the case at bar a part of the spirits that are not exported are also relieved from the excise tax, and some also receive the allowance made to spirits exported. The record is not entirely clear as to what proportion this is of the whole domestic consumption of spirits of this character. It is quite apparent, however, that it is a very small proportion, and the fact remains, which in our judgment is the controlling fact, that the very large part of the spirits of the class here under consideration that are sold to be consumed in Great Britain has to pay the excise tax, and that that which is exported does not, and, in addition thereto, receives the allowance heretofore stated.

In levying the countervailing duty provided for in paragraph E, supra, the collector has treated only the allowance of 3d and 5d per gallon as a bounty or grant. The Domestic excise tax of 14s. 9d. per gallon is not treated by him as constituting a bounty, doubtless for the reason that the rule in *United States v. Passavant* (169 U. S., 16) was applied in finding the value of these spirits for duty purposes and the amount of the domestic tax was added to make market value. We are not entirely certain that this takes the excise tax out

of the provisions of paragraph E, but as the question is not before us we leave it undecided. As to the allowance of 3d. and 5d. made on export, and which the collector has adopted in levying countervailing duty, there is no question in our minds but what it brings the case within the purview of paragraph E. The protests are overruled.

BYRON S. WAITE,

EUGENE G. HAY,

*Board of U. S. General Appraisers.*

**New York Protests.**

**Protest.**

**Importer.**

772186/75745

G. S. Nicholas & Co.

772189/71921

G. S. Nicholas & Co.

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772177/71091

E. LaMontagne's Sons.

772178/65246

E. LaMontagne's Sons.

772474/5187

E. & J. Burke, Ltd.

770927/7023

Francis Drex & Co.

772120/2509

Maison Champagne & Importation Co.

772118/4485

Kaunth, Naeckel & Kühne.

**Boston Protests.**

770064/5295

O. S. Pierce Co.

760750/4696

F. L. Roberts.

**Chicago Protest.**

770000/55271

Wiley Warehouse & Storage Co.

**Los Angeles Protest.**

770200/1345

Francis Drex & Co.

Enclosed: United States Court of Customs Appeals. Filed Oct. 8, 1915. Arthur B. Shadwin, Clerk.

**Stipulation.**

United States Court of Customs Appeals.

No. 1584.

G. S. Nicholas & Co. et al., Appellants.

vs.

The United States, Appellee.

It is hereby stipulated and agreed by and between the attorneys for the appellants and the appellee:



That so much of the record in the above entitled case as is embraced within Exhibit 1 of the stipulation of May 1, 1915, filed before the Board, consisting of printed copies of the Statutes of the United Kingdom of Great Britain and Ireland need not be printed in the record and may be referred to by either party upon argument with the same force and effect as if printed;

That so much of the record as is embraced within Paragraph 4 of the aforesaid stipulation, consisting of the publications therein enumerated need not be printed, it being distinctly understood, however, that such portions of said publications as may be  
30 relied upon by either party shall be subject to the objection as to competency, materiality and relevancy, as set forth in said Paragraph 4.

October 3, 1915, approved.

COMSTOCK & WASHBURN,

*Attorneys for Appellants.*

BERT HANSON,

*Attorney for Appellee*

M.

R. M. MONTGOMERY,

*Presiding Judge.*

Washington, Oct. 6, 1915.

Endorsed: United States Court of Custom Appeals. Filed Oct. 6, 1915. Arthur B. Shelton, Clerk.

### EXHIBIT 5.

BRITISH EMBASSY.

WASHINGTON, February 3, 1911.

To Honorable P. C. Knox, Secretary of State, etc., etc., etc.

SIR: I have communicated by cable with His Majesty's Government in regard to the conclusion arrived at by the Secretary of the Treasury as notified to this Embassy in your communication No. 1073 of the 28th instant to the effect that allowances made in Great Britain in respect to whiskey taken from bond for export are bounties or grants on exports within the meaning of Section 6 of the Tariff Act of 5th August, 1909.

The question has hitherto been dealt with through the United States Embassy in London but I am now instructed to represent to you the views of His Majesty's Government in — matter.

With this object I would wish to admit for the consideration of yourself and the competent authorities of the United States Government certain aspects of the question and certain arguments against the conclusion above referred to which merit full consideration before any action is taken on such conclusion.

The intention of Section 6 of the United States Tariff Act unquestionably is to prevent prejudice to American industry  
31 by the competition of imports artificially stimulated or "boun-

ty-fed" by foreign Governments. But in this case there can be no practical apprehension of such prejudice for the British allowances in question have been operating for half a century and Section 6 is the same in effect as Section 5 of the Tariff of 1897; but the application to those allowances of a countervailing duty has never been contemplated until the question of the applicability of the enquiries made them under Section 2 in regard to the application of the Minimum rates to British goods.

Similarly, there can be no presumption that the intention of these allowances is to artificially stimulate production in the industry concerned. Such intervention in favour of any industry is contrary to the economic principles upon which the fiscal policy of His Majesty's Government has been based during and for many years preceding the existence of these allowances. It is in affirmation of these principles upon which the fiscal policy of His Majesty's Government has been based during and for many years preceding the existence of these allowances. It is in affirmation of these principles that the Act instituting the allowances (23-24 Vic. ch. 129) prefaces their establishment with the words "In consideration of the loss and hindrance caused by excise regulations," etc. So far from these allowances being intended to protect or foster a domestic industry in order to strengthen it against competition abroad they owe their origin to the adoption by Great Britain of free trade principles. The necessity of raising revenue otherwise than by import duties of a protective character made a heavy excise upon spirits indispensable and that in turn caused the establishment of a complicated structure of fiscal regulations and administrative processes for the distilling industry. An excise has the highest cost of collection in proportion to the return of any tax—and this cost of collection greatly adds to the expense of carrying on the industry. As compensation for the heavy pressure of the excise and because spirits

are articles whose large consumption it is not desired to encourage the industry is accorded in the home markets a fair chance with foreign producers by an import duty, which restores the balance as between the home and the foreign distiller and on export to foreign markets is allowed a drawback for the loss and hindrance to which the exported product has been subjected together with that for home consumption. Drawbacks of duty accorded by protectionist States are not subjected to retaliatory measures and it is manifestly inequitable that an analogous allowance due, as has been shown to a preference for free trade over protectionist institutions should be singled out for penalty. This exposition of the character and history of the allowances should be sufficient to show that, if Section 6 of the Tariff Act be similarly examined, it will be found that they do not come within the meaning and scope of the United States Statute in question. It may be assumed, consequently that there is every disposition on the part of the United States authorities to give a fair and broad interpretation to the letter of the law, and to, adopt any reasonable interpretation of it that would prevent what would amount to a perversion of its purpose.

There are few precedents for the application of Section 6, and none



for its enforcement as against such allowances as these. The application of it to Russian "bounty-fed" sugar is not in point, for although the bounty in this case included compensation for an excise, yet it comprised also further concessions which in character and intention were clearly bounties. The decision was therefore justifiable upon that ground and did not need to deal with the case in those other points in which it resembled this case. Nevertheless the applicability of Section 6 was contested in the Courts and involved a long litigation and great expense to all parties before it was finally sustained. That its applicability would not be sustained in this case seems probable; for a refund of taxation is a drawback and not a "bounty or grant," and it can be shown that the compensation received does not exceed and is not even equivalent to the loss imposed. Where there is no net benefit there can not be a "bounty or grant."

33 I would therefore venture to suggest that if evidence, satisfactory to the competent authorities of the United States Government can be produced showing that this allowance does no more than cover the losses imposed on the industry by fiscal regulations, imposed for revenue raising purposes, that such evidence be accepted as proof that these allowances do not come within the meaning of the term bounty in the proper sense of the word. Evidence of this nature will be submitted as soon as possible but can not well be obtained before the date fixed for putting Section 6 into force. I have therefore to urge very strongly on your favorable consideration—that in view of what has been here set forth the enforcement of the order should be either postponed indefinitely or to such a date as would permit of an enquiry into the evidence above referred to.

I have the honor to be, with the highest consideration, sir, your most obedient servant,

JAMES BRYCE.

### Countervailing Duty on British Spirits.

#### Legal Aspects.

The leading cases illustrative of the application of the section of the United States Tariff imposing countervailing duties are those of Dutch and Russian sugars—none of the very few other cases in which the section has been applied—such as fish from St. Pierre, Chilean wine, etc., throw any additional light on its interpretation.

The protectionist principle underlying the intention of the Section is clearly to counteract any Government subsidy to a foreign industry such as would give it an artificial advantage in competition with American industry. But a mere remission in whole or in part of a burden imposed by that foreign Government on the industry does not constitute such an advantage. Doubtless the wording in the section "bounty or grant" is a wide one, but width was given it merely to enable it to cover all the various fiscal devices to which a protectionist policy resorts in order to foster home industries, and

not in order that the policy of inspiring the section should be strained to a point at which it becomes a perversion of its real purpose.

34 Thus in the Supreme Court decision in the Russian case (Supreme Court Reporter, Vol. 23, p. 223), the words "bounty" and "bonus" are used as synonymous, and in the Supreme Court decision in *United States v. Passavant* (18 Supreme Court Reporter, p. 219), "bonus" is used as synonymous with "drawback." But the preservation of the whole principle and purpose of Section 6 of the Tariff Act lies in maintaining the distinction between a "bounty" and a "drawback."

This distinction has moreover been properly observed in the leading cases under consideration.

In the case of Netherlands sugars (*United States v. Hills Brothers*) (vide *Treasury Decisions*, Volume IV, No. 43, p. 26), and (107 Fed. Rep., p. 107), the Circuit Court of Appeals did not hold that the mere remission of the excise tax by the Government of the Netherlands constituted a bounty, but that the excess of the so-called "rebate" over the amount of the tax did constitute a bounty.

Again in the case of Russian sugars (*United States v. Downs*) (Supreme Court Reporter, Volume 23, page 222), the imposition of the countervailing duty was properly sustained by the Supreme Court not because the Russian regulations remitted the excise tax on exported sugars, but because they also allowed the exporter a certificate of exportation, carrying with it a privilege of exemption from taxation which is transferable and has a substantial market value.

It was to meet such cases of indirect bounties as these that a wide wording was used in Section VI and not in order to allow its application to simple drawbacks or duty exemptions as in use in the United States or United Kingdom.

In the United States under Section 3329, Revised Statutes, as revised (21 Stat., 145), distillers of spirits can obtain export certificates in the nature of a quittance of internal revenue taxes or other burdens which carry certain rights in case of reimportation. But nowhere would American spirits therefore be held to be bounty-fed.

Now to take these British allowances. They were first introduced in 1860 when the loss caused to British distillers by the elaborate excise machinery had been established by the commercial treaty with France which admitted French spirits at a rate of duty equal to the British excise plus a surtax of 2d. per gallon on plain and 3d. per gallon on compound spirits, estimated as equivalent to the loss caused by the excise to home distillers; while at the same time the excise was raised. In 1902 these allowances were raised to 3d. and 5d., respectively, but are still, as can probably be satisfactorily shown, inadequate to cover the outlay caused the industry.

To penalize these drawbacks is therefore equivalent to penalizing the United Kingdom for its liberal treatment of and low duties on foreign imports. But for this free trade policy no high excise on spirits would have been required, no elaborate regulations embarrassing to production would have been established and no compen-

sating allowances would have been paid. There can be no reason in this case for stretching the wording of the \* \* \* section so as to make it cover an indirect bounty; because it has been contrary to the first principles of the policy of the United Kingdom throughout and preceding the existence of those allowances to give any such artificial stimulus to home industry. The purpose of the allowance is plainly stated in the Act of 1860 instituting them as being "in consideration of loss and hindrance caused by excise regulations."

This would seem to be clearly a case in which the maxim of Mr. Justice Story should be followed that "laws imposing duties are never construed beyond the natural import of the language" (3 Supreme Court, 384).

GEORGE YOUNG,  
*Secretary in Charge of Commercial Affairs.*

British Embassy, Washington, February 7, 1911.

#### EXHIBIT 6.

#### Copy H.

BRITISH EMBASSY,  
WASHINGTON, March 17, 1911.

The Honorable Philander C. Knox, Secretary of State.

36 SIR: In a note under date of February 8, you were good enough to inform me of the reference to the Treasury Department of arguments submitted by this Embassy against the conclusion arrived at by the Secretary of the Treasury that certain allowances granted in Great Britain to spirits on export came within the meaning of Section 6 of the Tariff Act and asking for a postponement to permit of the production of proof that these allowances were not bounties.

As you are, doubtless, aware, a postponement of the application of the order for one month was granted, which has been sufficient to permit the Embassy to obtain the required proof. It may not, however, be enough to allow of the full and careful reconsideration of the question which its intrinsic international importance and its commercial equities require. Unless, therefore, the new data now supplied is found to be so obviously conclusive that a decision can be come to, before the date fixed for imposition of the countervailing duty on March 22, I would strongly represent the propriety of a further postponement.

I trust, however, that this further protraction of the question to the prejudice of the most important branch of the commerce between our respective countries may not be necessary. His Majesty's Government believes that a mere perusal of the arguments and evidence submitted in the British case herewith inclosed can not fail to convince the competent authorities that the proposed action was taken under insufficient information. The full information now submitted would have been supplied at an earlier date had it not been

that His Majesty's Government considered that the brief statement of the purpose and effect of these allowances supplied through the American Embassy in London would be sufficient to indicate that Section 6 of the Tariff Act was not applicable. It was with great surprise that His Majesty's Government learned that the United States Government really contemplated the possibility of applying this section. The branch of British commerce affected

37 is one of such importance that any action of this nature directed against it would have an unfortunate effect on the relations between the two business communities. This surely supplies a ground for a careful reconsideration of the present position and of the applicability to it of the United States Statute, even apart from the especial claim of Great Britain to favorable treatment as the only remaining country which the products of the United States are permitted to enter free of any duty, except that on tobacco, imposed solely for the purpose of raising revenue.

The effort now made on our part to clear up the misunderstanding on this latter point as to the applicability of the Act to these allowances will, I can scarcely doubt, meet with a prompt response from the competent authorities of the United States Government.

I have the honor to be, with the highest consideration, sir, your most obedient servant,

JAMES BRYCE.

#### EXHIBIT 6.

#### Annex A.

#### *Allowances on British Spirits Exported.*

The question having been raised by the Government of the United States of America as to the exact character of the allowances now paid on the exportation of British spirits, we have thought it advisable, as the Department responsible by law for the administration of the spirit duties, to place on record the following statement of the facts, from which it will appear that, neither in intention nor in fact, can these allowances be regarded as bounties.

#### Origin of the Allowances.

These allowances have formed an essential feature of our system of taxing spirits ever since 1860, when, in consequence of the Cobden treaty with France, the former protective duties were abolished. It is a significant fact that the adoption of the allowances as part of our fixed system, so far from being associated with any idea

38 of a bounty, took place at the very time when free-trade principles secured the most complete acceptance in this country.

#### Object of the Allowances.

The object of the allowances originally was, and still is, not to place the manufacturer of British spirit in a position of advantage,

as compared with his foreign competitor in the foreign market, but to prevent him from being placed in a position of disadvantage in that market as a result of the expenditure which his own Government, for its own ends, forces him to incur in the process of manufacture.

The duty on British spirits is very heavy, and involves the necessity of special precautions being taken to prevent any spirit escaping the duty. These precautions include the imposition upon the manufacturer of a number of statutory requirements and restrictions in connection with his plant and methods of manufacture, which considerably increase the cost of manufacture. The allowances on exportation are intended to be an equivalent and no more than an equivalent of this extra cost.

This object has been kept in view in fixing the actual amount of the allowances.

The allowances were originally fixed by Mr. Gladstone in 1860 after prolonged consultation between the Revenue Authorities and the traders affected. The traders were required to formulate their claims in the fullest detail, stating what restrictions in their opinion increased the cost of manufacture and the exact amount of extra cost attributable to each; every item was closely criticised by the Revenue Authorities, some being disallowed altogether, and others allowed in whole or in part; with the result that the allowances were fixed at a figure which the Revenue authorities accepted as not exceeding the loss caused by revenue restrictions. In the period since

1860 the rates have been on more than one occasion modified as necessity arose, but the same object, as above described, has been kept in view, and the same procedure followed in order to arrive at the exact rates to be allowed.

(Signed)

L. N. GUILLEMAND,

*Chairman of the Board of Customs and Excise.*

F. S. PARRY,

*Deputy Chairman of the Board of Customs and Excise.*

Signed at the Board of Customs and Excise in the presence of—

(Signed) J. P. BYRNE, *Secretary.*

Custom House, London, 1 March, 1911.

*Statement of British Case Against the Imposition of a Countervailing Duty on Spirits.*

The note addressed to the United States Government by the Embassy on February 3, opened the British argument as follows:

"The intention of Section 6 of the United States Tariff Act unquestionably is to prevent prejudice to American industry by the competition of imports artificially stimulated or 'bounty-fed' by foreign governments. But in this case there can be no practical apprehension of such prejudice for the British allowances in question have been operating for half a century and Section 6 is the same in effect as Section 5 of the Tariff Act of 1897; but the applica-

tion to those allowances of a countervailing duty has never been contemplated until the question of the applicability of the section was raised last year presumably as a result of inquiries made then under Section 2 in regard to the application of the minimum rates to British goods.

40 "Similarly, there can be no presumption that the intention of these allowances is to artificially stimulate production in the industry concerned. Such intervention in favor of any industry is contrary to the economic principles upon which the fiscal policy of His Majesty's Government has been based during and for many years preceding the existence of these allowances. It is in affirmation of these principles that the Act instituting the allowance (23 and 24 Vic. c. 129) prefaces their establishment with the words 'in consideration of the loss and hindrance caused by excise regulations,' etc. So far from these allowances being intended to protect or foster a domestic industry in order to strengthen it against competition abroad, they owe their origin to the adoption by Great Britain of free trade principles. The necessity of raising revenue otherwise than by import duties of a protective character made a heavy excise upon spirits indispensable and that in turn caused the establishment of a complicated structure of fiscal regulations and administrative processes for the distilling industries. An excise has the highest cost of collection in proportion to the return of any tax—and this cost of collection greatly adds to the expense of carrying on the industry. As compensation for the heavy pressure of excise (and because spirits are articles whose large consumption it is not desired to encourage) the industry is accorded in the home markets a fair chance with foreign producers by an import duty, which restored the balance as between the home and the foreign distiller; and on export to foreign markets is allowed a drawback for the loss and hindrance to which the exported product has been subjected, together with that for home consumption. Drawbacks of duty accorded by protectionist States are not subjected to retaliatory measures and it is manifestly inequitable that an analogous allowance due, as has been shown to a preference for free trade over protectionist institutions should be singled out for penalty."

To penalize these drawbacks or allowances is indeed equivalent to penalizing the United Kingdom for its low duties on American products. But for this liberal treatment of foreign imports  
41 into the United Kingdom no high excise on spirits would have been fiscally requisite, no elaborate and economically expensive system of internal revenue regulations would have been thereby required, and no compensation for this expense to exports would have resulted. Confirmation of this argument in the form of an authoritative official statement signed by the competent officers of His Majesty's Government will be found in document A, herewith annexed. Further evidence of the object and policy of these allowances seems scarcely necessary in view of the categorical character and official source of the document A, above mentioned. But an extract from the report of the department committee on Industrial Alcohol, published in 1905, is appended as annex B, as evi-



dence in point, but without any relation in purpose to the present controversy.

The Embassy note continues:

"The exposition of the character and history of the allowances should be sufficient to shew that—if Section 6 of the Tariff Act be similarly examined, it will be found that they do not come within the meaning and scope of the United States statute in question. For it may be assumed that there is every disposition on the part of the United States authorities to give a fair and broad interpretation to the letter of the law, and to adopt any reasonable interpretation of it that would prevent what would amount to a perversion of its purpose.

"There are few precedents for the application of Section 6, and none for its enforcement as against such allowances as these. The application of it to foreign 'bounty-fed' sugars is not in point, for although the bounty in these cases included compensation for an excise, yet it comprised also further concessions which in character and intention were clearly bounties. The decisions were therefore justifiable upon that ground and did not need to deal with the cases in those other points in which they resembled this case."

42 This important point that remission in whole or in part of a burden imposed by the foreign government has not been and should not be held to constitute a "bounty" within the meaning of the Tariff Act is dealt with in the memorandum herewith annexed as C.

The note continues:

"Nevertheless the applicability of Section 6 was contested in the courts in both cases and involved a long litigation and great expense to all parties before it was finally sustained. That its applicability would not be sustained in this case seems probable; for a refund of taxation is a drawback and not a 'bounty' or 'grant,' and it can be shewn that the compensation received does not exceed and is not even equivalent to the loss imposed. Where there is no net benefit there can not be a 'bounty' or 'grant.' I would therefore venture to suggest that if evidence satisfactory to the competent authorities of the United States Government can be produced showing that this allowance does no more than cover the losses imposed on the industry by fiscal regulations, imposed for revenue raising purposes, that such evidence be accepted as proof that these allowances do not come within the meaning of the term 'bounty' in the proper sense of the word."

This evidence has now been obtained and will, it is confidently expected, be found to be of the most complete and conclusive character.

In the first place the official statement, herewith annexed as D, states categorically on the authority of the competent officers of His Majesty's Government that "We have no hesitation in certifying that at the present time the allowances paid on export of British spirits are in no sense bounties, and that the existing rates of 3d. and 5d. are no higher than is necessary \* \* \* to recoup the exporter in respect of the loss and hindrance caused by excise regulations—."

It would seem unnecessary to add anything to so authoritative a pronouncement, but further data may be of interest, though  
43 it can hardly add to the proof. Such data will be found in the evidence given before the department committee on Industrial Alcohol, above referred to in 1905, an extract of which is annexed for convenience, Annex E. The purport of this enquiry was, of course, not to the present point, but the evidence in so far as it bears on the point is none the less valuable.

Further, and in order that the United States Government may have evidence of the most formal character possible from the sources themselves of information on the subject affidavits have been obtained from the principal firms of distillers in the United Kingdom to the effect that the allowances do not in fact compensate the industry for the losses due to excise regulations. These affidavits are inclosed in Annex F.\*

They are headed by one received through the foreign office and the Incorporated Society of Industries, which relates to the firm of James Buchanan and Co., John Dewar and Sons, Mackie and Co., John Walker and Sons. Other, supplemented by a further affidavit from the Manager of Messrs. Dewar. Other affidavits represent, Andrew Usher and Co., Bullock, Lade and Co., and others, Slater Roger and Co., Highland Distilleries Co., Tanqueray Gordon and Co., John Power and Son, J. Hopkins and Co., J. Calder and Co., and others, Distillers Co., Ltd., of Edinburgh, Lowrie and Co., Dublin Distillers Co., Cork Distillers Co., Dunville and Co., of Belfast, all of which have been sworn before United States Consular Officers. Also the following affidavits, sworn before Commissioners of Oaths—Old Bushmills Co., of Belfast, Peter Dawson Co., Henry White and Co., W. Williams and Sons.

The British case against imposition of these countervailing duties may therefore be summarized as follows:

44 a. No prejudice to American industry from bounty-fed competition results now or ever has resulted from these allowances.

b. The allowances are not bounties in their origin or object.

c. They originate on the contrary in a policy of free trade and to penalize them will be to penalize liberal treatment of American products and not to promote American industry.

d. Therefore the policy inspiring the countervailing duty does not apply to them and this is confirmed by the precedents of its application.

e. This is evidently and equitably so because the allowances do not even compensate the losses they are intended to reimburse, as is abundantly proved.

f. That in view of the complete and conclusive data now submitted, it would be neither a correct application of the law of the United States nor a just proceeding in commercial foreign policy to

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\* The originals of these affidavits have been forwarded direct to the Treasury.



countervail these allowances as proposed on the incomplete information previously before the United States Government.

BRITISH EMBASSY, WASHINGTON, March 17, 1911.

To the Lords Commissioners of His Majesty's Treasury:

We have the honor to forward herewith, in compliance with Your Lordship's instructions, a Memorandum dealing with the subject of "Allowances on British Spirits Exported."

(Signed)

L. N. GUILLEMAND.

F. S. PARRY.

Customs House, London, 1st March, 1911.

#### EXHIBIT 6.

#### Annex B.

#### *Extract from Report of Departmental Committee on Industrial Alcohol.*

"That something more is required in order to place spirits used as an instrument or material of manufacture on a footing satisfactory in a matter of cost. Anything in the nature of a bounty is 45 undesirable. But seeing that on the price of spirit the very existence of certain industries may depend, and that for all industries using alcohol the price of the spirit is an important factor for that portion of trade that lies outside the home market, we are strongly of opinion that it is desirable to make such arrangements as will free the price of industrial spirit from the enhancement due to the indirect influence of the spirit duties. It would surely be disastrous if, to the mischief that the drinking of alcohol causes by diminution in the efficiency of labour, the taxation of alcohol should be allowed to add the further mischief of narrowing the openings for the employment of labour.

"In our opinion, there is only one way in which the influence of the spirit duties can be satisfactorily counteracted in favor of industrial alcohol. To diminish the excise restrictions on the manufacture of alcohol might mitigate the influence, but probably not to any great extent. For with a duty of over 1,000 per cent on the prime cost of an article, revenue control must of necessity be strict. Moreover, the gain to industry would be made at the risk of the revenue, and a duty that yields over £20,000,000 per annum to the Exchequer is a public interest that can not be trifled with. To relieve imported spirit from the surtax which is needed to counterbalance the burden imposed on production in this country by the excise regulations would be manifestly unfair; and its effect would be to give to the State-aided spirits from Germany or Russia a practical monopoly of the market in this country for industrial spirit. The only adequate course, it seems to us, is to neutralize, for industrial spirit, the en-

hanced cost of production due to excise control, in the same way as the enhanced cost is neutralized for exports, viz: by granting an allowance on such spirit at such rate as may from time to time be taken as the equivalent of the increase in cost of production due to revenue restrictions. At the present time, the rate is taken at 3d  
 46 per proof gallon for plain spirits, and the allowance would accordingly be at this rate, and should be paid equally on all industrial spirit whether it be of British or of foreign origin."

## EXHIBIT 6.

### Annex C.

#### *Memorandum. Countervailing Duty on British Spirits. Legal Aspects.*

The leading cases illustrative of the application of the section of the United States tariff imposing countervailing duties are those of Dutch and Russian sugars—none of the very few other cases in which the section has been applied—such as fish from Saint Pierre, Chilean wine, etc., throw any additional light on its interpretation.

The protectionist principle underlying the intention of the section is clearly to counteract any Government subsidy to a foreign industry such as would give it an artificial advantage in competition with American industry. But a mere remission in whole or in part of the burden imposed by that foreign government on the industry does not constitute such an advantage. Doubtless the wording in the section "bounty or grant" is a wide one, but width was given it merely to enable it to cover all the various fiscal devices to which a protectionist policy resorts in order to foster home industries, and not in order that the policy inspiring the section should be strained to a point at which it becomes a perversion of its real purpose.

Thus in the Supreme Court decision in the Russian case (Supreme Court Reporter, Vol. 23, p. 223), the words "bounty" and "bonus" are used as synonymous with "drawback." But the preservation of the while principle and purpose of Section 6 of the Tariff Act lies in maintaining the distinction between a "bounty" and a "drawback."

This distinction has moreover been properly observed in the leading cases under consideration.

47 In the case of Netherlands sugars (U. S. v. Hills Brothers) (vide Treasury Decisions, Vol. 4, No. 43, p. 26) and (107 Fed. Rep., p. 107), the Circuit Court of Appeals did not hold that the mere remission of the excise tax by the government of the Netherlands constituted a bounty, but that the excess of the so-called "rebate" over the amount of the tax did constitute a bounty.

Again in the case of Russian sugars (U. S. v. Downs) (Supreme Court Reporter, Vol. 23, p. 222), the imposition of the countervailing duties was properly sustained by the Supreme Court not because the Russian regulations remitted the excise tax on exported sugars, but because they also allowed the exporter a certificate of exporta-

tion carrying with it a privilege of exemption from taxation which is transferable and has a substantial market value.

It was to meet such cases of indirect bounties as these that a wide wording was used in Section 6, and not in order to allow its application to simple drawbacks or duty exemptions as in use in the United States or United Kingdom.

In the United States, under Section 3329, Revised Statutes, as revised (21 Stat., 145), distillers of spirits can obtain export certificates in the nature of a quittance of internal revenue taxes or other burdens which carry certain rights in case of reimportation. But nowhere would American spirits therefore be held to be bounty-fed.

#### EXHIBIT 6.

#### Annex D.

##### *The Existing Rates of Allowance.*

The existing rates of allowance, viz: 3d. per gallon for plain spirits and 5d. per gallon for compounded spirits, were fixed in 1902, as the result of a long period of discussion, extending over several years, between the revenue authorities and the traders concerned, and they are fully justified by reference to the conditions of today.

#### 48 Allowance of 3d. on Plain Spirits.

This allowance is given in respect of the various restrictions imposed by the law upon distillers, of which the following are the most important:

- (1) The prohibition against brewing and distilling at the same time;
- (2) The prohibition against mixing worts while in the process of fermentation;
- (3) The compulsory stoppage of work on Sundays;
- (4) The restrictions on the manufacture of yeast.

We are satisfied that at the present time the cost thrown upon the distiller by these restrictions is not less than the 3d. allowed.

#### Allowance of 5d. on Compounded Spirits.

Rectifiers and compounders, i. e., manufacturers of British compounded spirits (e. g., gin, sloe gin, orange bitters, and British liquors) work under this further statutory disability that their business must be carried on apart from a distillery and the compounds must be manufactured from spirits on which the duty has been paid. This restriction increases the cost of manufacture by at least 2d. per gallon. An allowance of 5d. per gallon is therefore paid on the exportation of British compounded spirits of which 3d. is payable in respect of the restrictions at the distillery, which have enhanced the price of the spirits as purchased, and the remaining 2d.

in respect of the restrictions imposed on the market. In view of the fact stated above, we have no hesitation in certifying that at the present time the allowances paid on export of British spirits are in no sense excessive, and that the existing rates of 5d. and 5d. are no higher than is necessary to attain the object with which they were introduced by Mr. Gladstone in 1860, viz: that they should encumber the exporter in respect of (to quote the Act under which they were originally granted) "the loss and hindrance caused by excise regulations in the distillation and rectification of spirits in the United Kingdom" (25 & 26 V. c. 129, s. 4).

(Signed)

L. N. CHILMEND,

*Chairman of the Board of Customs and Excise.*

F. S. PARRY,

*Deputy Chairman of the Board of Customs and Excise.*

Signed at the Board of Customs and Excise in the presence of—

(Signed)

J. P. SYKES, *Secretary.*

Custom House, London, March 1, 1901.

#### EXHIBIT C.

##### EXHIBIT C.

*Testimony of Mr. Nicholas of J. W. Nicholas and Son of London, a Leading Firm of Distillers, Given in 1900 Before a Departmental Committee.*

1900. Do you consider that the allowance which we make of 5d. per proof gallon on the spirit given covers you?—The 5d. allowed for export is very insufficient. We have no chance in a limited market, and it is only, generally speaking, where British spirit is sold for that we can get a chance of competing.

1901. In what form does your spirit go abroad?—as a plain spirit?—Yes.

1902. What at the present price of the spirit, 50d. per proof gallon, the allowance of 5d. is based on the assumption that 30 per cent of the cost of production is due the excise restrictions, in other words, without the excise restrictions you could sell that spirit at 5d. which is now sold at 10d.?—Yes. The special methylated spirit is sold at 10d.

1903. Therefore one may assume on the basis of the existing figures, namely, that the cost of production is 5d., and that of that 5d. one-third is due to the excise restrictions?—Yes.

1904. In other words, without the excise restrictions you could produce at 5d. per gallon?—Certainly.

1905. You have no doubt about that, have you? You think you could produce at 5d.? I certainly think we could.

The excise restrictions trouble us in so many more ways than are suggested by the Excise. The Excise, in the differential duty, gives us certain money value for certain prohibitions, but there are many more prohibitions which they will not acknowledge; for instance, we can not work by-products as we should like to do, owing to the restrictions. We can not work kindred trades in conjunction. For instance, we might be sugar refiners or starch makers, or other kindred trades. We are cut off entirely from that. We are put into a category by ourselves simply as distillers. These restrictions, therefore, tell very much against us. Also, whenever we apply for an alteration in plant, plans have to be produced and reasons given, why we are going to do it; if the Excise do not like the scheme, we can not carry it out. We have to satisfy them as to its chances of success. It is very hard indeed for a distiller to try experiments to improve his produce or plant. There are many things of that kind. Besides, owing to being under supervision, no secret process whatever can be worked, because the information leaks out and is passed on to other distilleries. In most free trades money is made by enterprising people working their own schemes in their own way, but we are absolutely deterred from doing so. In fact, by the rules and regulations, there is virtually only one way to make spirit—you have got to brew and use certain vessels, and you have got to distil and use certain stills, and the whole thing has got to be followed out in a certain way. Therefore the values that have been agreed upon as a compensation between us and the Excise by no means represent the whole case.

We, the undersigned, James Buchanan, Chairman of James Buchanan & Co., Ltd., of Glasgow and London; Thomas R. Dewar, Managing Director of John Dewar & Sons, Ltd., of Perth and London; Peter J. Mackie, Chairman of Mackie & Co., Distillers, Ltd., of Glasgow and London, and George P. Walker, Chairman of John Walker & Sons, Ltd., of Kilmarnock and London, Exporters of Scotch Whisky to the United States of America, do hereby make such and say:

(a) That the drawback of 5d. per proof gallon allowed by the British Government on the exportation of British spirits is in no sense a bounty, but an "allowance" long since granted, after full enquiry, and continued to distillers as some compensation for the stringent manufacturing restrictions and expense imposed upon them by competition with revenue regulations.

(b) That these restrictions include: e. g., the condition that mashing and distilling processes must be carried on at separate times, thereby causing one-half of the plant to remain idle, whereas in Continental Distilleries these processes can be carried on simultaneously and continuously, even during Sundays. The result of this restriction is, by comparison, to reduce the production of the British distiller, employing similar plant, by one-half or two-thirds.

(c) That the regulations governing the equipment of distilleries, warehouses and housing accommodation for revenue officers are exceedingly onerous in their requirements of capital outlay and that

the drawback in question has been, and is, admittedly given as some recompense therefor.

(Signed)

JAS. BUCHANAN.  
THOMAS R. DEWAR.  
P. J. MACKIE.  
GEO. P. WALKER.

Subscribed and sworn by the above-named James Buchanan, Thomas R. Dewar, Peter J. Mackie and George P. Walker at No. 79 Mark Lane, in the City of London (England), this twenty-seventh day of February in the year of our Lord 1911, before me

(Signed)

ALFRED DONNISON,  
*Not. Pub.*

A Commissioner to administer oaths in the Supreme Court of Judicature in England.

52 CITY OF LONDON, ENGLAND, ss:

On this twenty-seventh day of February, in the year of our Lord, one thousand, nine hundred and eleven, before me, Alfred Donnison, of the City of London, Notary Public, duly admitted and sworn and a Commissioner to administer oaths in the Supreme Court of Judicature in England, personally came and appeared James Buchanan, Thomas R. Dewar, Peter J. Mackie and George P. Walker, to me known, and known to me to be the persons respectively named and described in the foregoing affidavit, who, having been by me each duly sworn, made oath and said that the several matters and things mentioned and contained in the said affidavit were true.

And I further Certify that the signatures "Jas. Buchanan," "Thomas R. Dewar," "P. J. Mackie" and "Geo. P. Walker" thereto respectively subscribed are of the respective proper handwriting of the said James Buchanan, Thomas R. Dewar, Peter J. Mackie and George P. Walker, and were this day subscribed by them in my presence.

In testimony whereof I have hereunto set my hand and affixed my Seal of Office the day and year above written.

ALFRED DONNISON,  
*Not. Pub.*

(Certificate.)

I, Alexander John Cameron, of Perth, Scotland, Secretary to John Dewar & Sons, Limited, Distillers there, being duly authorised under the Seal of the Company to make Affirmation on its behalf do solemnly and sincerely affirm and make oath that the allowance made to us by the Treasury of the British Government on Whisky exported to foreign countries and amounting to three pence per Imperial proof gallon as tested by Sykes' hydrometer does not adequately reimburse or cover us for the extra expense and outlay incurred by us in the manufacture of Whisky by reason of the many restrictions and re-

straints put upon us by the British Excise Regulations such as—

53 (a) Separation of periods in distillation, thus involving idleness of half our plant which would be obviated did such restrictions not exist.

(b) The prohibition of Sunday work.

(c) Interest on capital thus sterilised.

(d) Various other minor restrictions which all tend to increase the cost of production.

And I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of "The Oaths Act of 1888."

Declared at Perth, this 24th day of February, 1911, before me, Robert Halley, Justice of the Peace for the County of Perth in Scotland.

(Signed)

A. J. CAMERON.

Affidavit by James Charles Calder, managing director of James Calder and Company, Limited, Bo'ness Distillery, and partner in Gartloch Distilleries Company, Chryston, Grain Distilleries; and director of Stronachie Distillery, Forgandenny, Scotland, Pure Highland Pot Still Distillery.

I am a practical distiller of whiskies, both malt and grain, and have been brought up to it all my life, having worked through all the processes, and have a thorough knowledge both of the practical and commercial side of the business, and I solemnly declare that I consider the rebate of three pence per proof gallon, allowed to us by the Excise Authorities in this country on the exportation of British Whiskies, is not sufficient to cover the actual loss of producing the whisky on account of the Excise Regulations. These regulations are so many and so varied that it is impossible to enumerate them in detail, but I have repeatedly made application and discussed the matter with the Excise Authorities asking for an increase of this rebate as it was not sufficient, and pointed out the reasons why I considered it too small, but have never been successful in getting

54 it increased, as our Excise Authorities said to me that the revenue was so much needed that there was no chance of getting anything extra, and it is proof positive that this allowance is not a bounty, but an allowance on account of the extra cost, simply and solely that it is allowed, as, otherwise, the Government would never grant us this money as there is no industry to which they pay less consideration.

(Signed)

JAS. C. CALDER.

Subscribed and sworn to before me at Edinburgh, Scotland, this 17th day of February, 1911.

FREDERICK PIATT,  
Vice and Deputy Consul of the  
United States of America.



## EXHIBIT 7.

No. 101, American Consulate, Edinburgh, Scotland, March 23, 1910.

Subject: Allowance on the Exportation of Whisky.

To the Honorable the Assistant Secretary of State, Washington.

SIR: I have the honor to say that in a report from this office to the Department of State, dated December 19, 1904, on "Blending Whiskies in Scotland" reference was made to the allowance or bounty upon the exportation of British spirits. The terms of this allowance are as follows (2 Edward VII, Ch. 7, Paragraph 5):

"On plain spirits and spirits of wine, on being exported or used in warehouse for fortifying wines, or lime, or lemon juice (payable to the person giving security for the exportation, or the person giving the written request for the use of the spirits, as the case may be) and on spirits of wine on deposit in warehouse (payable to the person in whose name they are warehoused) per proof gallon, 3 pence."

55 Exporters of whisky from bond in this country to the United States receive this allowance of 3 pence per proof gallon.

I respectfully request information as to whether or not, under Section 6 of the United States Tariff Act of 1909, a countervailing duty of 3 pence per proof gallon is levied upon British whisky imported into the United States.

I have the honor to be Sir, your obedient servant,

(Signed)

RUFUS FLEMING, *Consul*.

No. 103.

AMERICAN CONSULATE,  
EDINBURGH, SCOTLAND, April 28, 1911.

Subject: Allowance on the Exportation of Whisky.

To the Honorable the Assistant Secretary of State, Washington.

SIR: In obedience to the Department's instruction of the 15th instant (File No. 12194/69, Serial No. 68) enclosing a copy of a letter from the Acting Sec'y of the Treasury with reference to the allowance on exportation of British spirits, I have the honor to enclose herewith a copy of the Customs and Inland Revenue Act of 1885 (48 and 49 Vict. Ch. 51) a copy of the Revenue Act of 1889 (52 and 53 Vict., Ch. 42) a copy of the Finance Act of 1895 (58 Vict., Ch. 16) and a copy of the Finance Act of 1902 (2 Edw. VII, Ch. 7). The provisions of each of these acts are permanent unless and until amended. The terms of the original law, granting an allowance on the exportation of whisky, etc., are found in the Customs and Inland

Revenue Act of 1885. The amount of the allowance was increased by the Finance Act of 1902 (2 Edw. VII, Ch. 7) from 2 pence to 3 pence per proof gallon. There has been no change in the law since 1902.

On the withdrawal of whisky from bond for export the Customs Office certifies to the Excise Office of the district the number of proof gallons and the name of the exporter, and upon this certificate  
56 the exporter receives 3 pence per proof gallon. British proof spirit ascertained always with Sykes' hydrometer is that which at the temperature of 51° Fahrenheit weighs exactly twelve-thirteenthths of an equal measure of distilled water. A British gallon of proof spirit is the quantity which weighs nine and three-thirteenthths lbs. avoirdupois.

I have the honor to be, Sir, your obedient servant,

(Signed)

RUFUS FLEMING, *Consul*.

Enclosures: 1. Customs and Inland Revenue Act, 1885. 2. Revenue Act, 1889. 3. Finance Act, 1895. 4. Finance Act, 1902.

No. 104.

AMERICAN CONSULATE,  
EDINBURGH, SCOTLAND, June 7, 1910.

Subject: Allowance on the Exportation of Whisky.

To the Honorable The Secretary of State, Washington.

SIR: In obedience to the Department's instructions of the 25th ultimo (No. 69), enclosing a copy of a letter from the Treasury Department relative to the allowance on the exportation of British spirits, I have the honor to report that a distiller, blender or other owner of whisky in a British bonded warehouse pays no tax or charge of any kind to the Government. When whisky is taken from bond, in casks, hogsheads or bottles, and entered for home consumption the excise tax paid is 14/9 (\$3.58) per British proof gallon. When whisky is taken from bond for export, in casks, hogsheads or bottles, the Government pays the exporter 3 pence per proof gallon. On this exported whisky the Government has received nothing from the manufacturer, blender, or exporter.

The explanation offered by Customs and Excise officers of the allowance on the exportation of whisky is that it is intended to compensate the manufacturer, blender, or exporter for the trouble and  
57 expense to him caused by the Excise restrictions, so that he will be able to place his goods in foreign markets unburdened by any extra cost of production. Why a deduction of a like amount is not allowed on whisky for domestic consumption two reasons are offered by Customs and Excise Officers: 1. The manufacturers, or blenders are all treated alike and are therefore on equal terms in the home market. 2. The manufacturers and blenders are

compensated for the extra cost on account of Excise restrictions by a Protective duty or surtax on imported spirits. The customs duty on whisky is 5 pence more per proof gallon than the Excise tax at 14/9 (\$3.58) per proof gallon as at present, the customs duty is 15/2 (\$3.69) per proof gallon on foreign whisky.

But considering that the Government derives no revenue whatever from domestic whisky which is exported, and inasmuch as whisky blended and bottled in bond and entered for home consumption is on precisely the same level of costs to the manufacturer or blender as whisky exported, the allowance of 3 pence per proof gallon on exportation appears to be purely a grant or bounty.

I have the honor to be, Sir, your obedient servant.

(Signed)

RUFUS FLEMING, *Consul*.

AMERICAN CONSULATE,  
EDINBURGH, SCOTLAND, August 5, 1913.

Subject: The Export Bounties on British Spirits.

To the Honorable the Secretary of State, Washington.

SIR: I have the honor to report that in a despatch from this office, dated March 23, 1910 (N. 101) attention was called to the allowance or bounty paid by the British Government upon exports of British spirits: that with a despatch from this office dated April 28, 1910 (No. 103) copies of the Acts of Parliament granting an allowance on the exportation of spirits were enclosed that in a despatch dated June 7, 1910 (No. 104) the character of this allowance was precisely defined; that on January 21, 1911, the Treasury  
58 Department imposed countervailing duties amounting to 3 pence per British proof gallon on British plain spirits and to 5 pence per proof gallon on British compounded spirits imported into the United States, to take effect 30 days from the date of the order; that the operation of the order was deferred; and that on May 2 the Treasury decision of January 21 was rescinded, the Treasury Department having reached the conclusion that the allowance paid by Great Britain on spirits when exported was not a bounty or grant within the meaning of Section 6 of the Tariff Act of August 5, 1909; that this office has no information in regard to the grounds upon which the Treasury decision of January 21, 1911, was reversed, but I deem it my duty to make further representations concerning this allowance on exported spirits.

Long and careful investigation of the processes in the manufacture, blending and bottling of British Spirits has confirmed the opinion that the allowance is simply a grant to exporters. Spirits to be exported and spirits to be entered for domestic consumption are taken from the same vat. The contention of exporters of whiskey that the allowance of three pence per proof gallon is of the nature of a "drawback" for extra expense imposed by the excise restrictions upon their business, has no validity. The additional labor cost or other cost to blenders and bottlers involved in the excise restrictions is trifling, inasmuch as fully four-fifth- of the spirits to be entered

for home consumption are blended and bottled in bond by the same employees who blend and bottle spirits to be exported and under exactly the same conditions. Any increased cost on account of excise restrictions is more than counterbalanced by the saving effected by bottling, etc., in bond. In the processes of blending and bottling and of casing and barreling spirits, there is a certain amount of waste, especially due to the breaking of bottles or other containers.

In bond, the loss by this waste of spirits is comparatively small, as no tax has been paid on the spirits. On every gallon wasted in bond by the bursting of bottles, etc.,—the loss is from  $2/6$  (61 cents) to  $5/$  (\$1.21), whereas on every gallon of tax-paid spirits wasted the loss is from  $17/3$  (\$4.19) to  $19/9$  (\$4.80). Obviously, it is economical to blend and bottle spirits in bond for domestic consumption as well as for export; and it is obvious also that the allowance on the exportation of spirits is purely a grant or bounty. This allowance is so regarded here by all users of neutral spirits (Manufacturing chemists and others), by dealers in wines, and by dealers in whisky who are not exporters. The effect of this export bounty upon the Scotch whisky trade has long been observed in the great efforts of distillers and blenders to increase their sales in foreign and British colonial markets. The allowance on whisky exported, three pence per proof gallon, is a fair wholesale profit and has enabled distillers and blenders largely to extend their trade abroad.

I have the honour to be, Sir, your obedient servant.

(Signed)

RUFUS FLEMING,  
*American Consul.*

#### EXHIBIT 8.

No. 85.

WASHINGTON, D. C., March 19, 1914.

Secretary of State.

SIR: With further reference to your note No. 272 of the 7th instant I have the honor to inform you that I am in receipt of a telegram from my Government stating that there has been no change whatever since 1911 either in the amount or nature of the allowance paid H. M. G. on the export of British spirits.

60

#### EXHIBIT 9.

BRITISH EMBASSY, WASHINGTON, May 1st, 1914.

SIR: With reference to your note No. 265 of March 2nd and to subsequent correspondence on the subject of the intention of the Treasury Department to impose countervailing duties on imported British spirits on the ground that the allowance granted on the exportation thereof constitutes a bounty within the meaning of Para-

graph E, Section 4 of the Tariff Act, I have the honor to inform you that His Majesty's Government have carefully examined the arguments contained in the despatch from the United States Consul at Edinburgh upon which the Treasury's Department's decision is founded.

After careful consideration of this despatch His Majesty's Government feel convinced that the United States Consul is under a misapprehension as to the facts of the case. He maintained that the allowance is of the nature of grant or bounty, and not merely a drawback, because British Spirits for export and for home consumption are taken from the same vat and are blended and bottled in bond; and that therefore the trifling extra cost imposed by the Excise regulations is more than counterbalanced by the saving of the amount of the tax, on such spirits as are wasted by the breaking of bottles in the process of bottling and blending in bond. This argument rests upon the erroneous assumption that the exporter received the allowance as compensation for extra expense caused to him by the excise regulations governing the blending and bottling operations in bonded warehouses. But these regulations have no bearing upon the question at issue. The allowance of 3d in the case of plain spirits is granted solely on account of statutory restrictions on the actual brewing and distilling which increase the cost of production to the distiller; the allowance of 5d in the case of compounded spirits is made up of 3d payable in respect of the above mentioned restrictions at the distillery and 2d extra on account  
 61 of the further statutory disability that the work of rectifying and compound must be carried on apart from a distillery and the compounds must be manufactured from spirits which have already paid duty. The regulations under which the subsequent operations of vatting blending and bottling are carried in bonded warehouses are not, and never have been considered in connection with the export allowance.

I have the honor to transmit herewith for the further information of the United States officials, a copy of a Memorandum drawn up by His Majesty's Commissioners of Customs and Excises in 1911, defining the precise character of these allowances.

With reference to the statement contained in the Consul's despatch to the effect that "British users of neutral spirits (manufacturing chemists and others) dealers in wines and dealers in whisky, who are not exporters regard the allowance as a bounty, His Majesty's Government doubt whether this view is widely prevalent. They point out, however, that these classes of traders have no interest in the matter and probably few have any knowledge of the nature and reasons of the allowance.

Finally I may observe that the allegation that this allowance constitutes "a grant to exporters" would seem to be sufficiently disapproved by the one fact that an allowance is also granted on spirits used in the production of industrial spirits for domestic consumption under the British Revenue Act of August 4, 1906, Part 1, Section 1, a fact quoted in the United States Treasury Memorandum of April

17, 1911, in support of their revocation of the Order Imposing countervailing duties in the following terms:

*"United States Treasury Memorandum of April 17, 1911."*

"Fifth. The fact that the British Revenue Act of August 4, 1906, Part 1, Section 1, provides that:

62 "Where any spirits are used by an authorized methylator for making industrial methylated spirits, or are received by any person for use in any art or manufacture under Section 8 of the Finance Act, 1902, the like allowance shall be paid to the authorized methylator or to the person by whom the spirits are received as the case may be, in respect to those spirits as is payable on the exportation of Plain British Spirits."

"The effect of this Act is clearly to indicate that the allowance is a bona fide allowance as stated in the Act of 1860, and is not in any sense an export bounty."

I have the honor on behalf of His Majesty's Government to submit the foregoing considerations to the judgment of the United State Government in reply to the invitation conveyed in your note of March 2d, and in the confidence that, upon examination, they will be found ample to justify the contention that the Consul's report is based upon a misconception of the facts of the case.

I have the honor to be, with highest consideration, sir, your most obedient, humble servant.

(Signed)

CECIL SPRING-RICE.

The Honorable W. J. Bryan, Secretary of State, etc., etc., etc.:

United States Treasury Memorandum of April 17, 1911, Referred to in the Foregoing Despatches.

*Memorandum for the Customs Division.*

Relative to the Allowance Paid on the Exportation of British Spirits.

April 17, 1911.

In determining the question whether or not a countervailing duty shall be assessed upon spirits manufactured in Great Britain and imported from there to this country, the principal facts to be taken into consideration are:

63 First, the fact that Great Britain has a fiscal policy not only of free trade, but also of a lack of artificial stimulus to trade such as is produced by bounties.

Second, that the allowance of 3d. a gallon authorized by Section 3 of the Act of 48 and 49 Victoria, chapter 51, is an allowance made as expressly stated in the preceding similar act (Section 4 of the Act of 23 and 24 Victoria, page 29) "In consideration of the loss and hindrance caused by the excise regulations in the distillation and rectification of spirits in the United Kingdom."



Third, that from evidence produced in the form of sworn statements of distillers and rectifiers and other evidence produced by the British Government, it appears that the allowance is not in excess of the actual loss and hindrance caused by the excise regulations.

Fourth, the fact that there is a greater amount of duty assessed per gallon upon imported spirits into Great Britain than there is assessed as excise upon domestic manufactured spirits in Great Britain, thus clearly indicating that the domestic distiller or rectifier is protected against competition at home; and not merely protected by the allowance in question against competition in his export trade.

Fifth. The fact that the British Revenue Act of August 6, 1906, Part 1, Section 1, provides that:

"Where any spirits are used by an authorized methylator for making industrial methylated spirits, or are received by any person for use in any art or manufacture under Section 8 of Finance Act of 1902, a like allowance shall be paid to the authorized methylator, or person by whom the spirits are received as the case may be, in respect to those spirits as is payable on exportation of plain British Spirits."

The effect of this act is clearly to indicate that the allowance is a bona fide allowance as stated in the act of 1860 and is not in any sense an export bounty.

64 Sixth. The fact that this allowance has been made since 1860 without having been acted upon by this Department at any time prior to the present investigation.

In view of these considerations the Department has accepted the view that the allowance in question is not a bounty or grant within the meaning of Section 6 of the Tariff Act of August 5, 1909, and consequently that no countervailing duty shall be assessed upon importations of British Spirits.

T. D. 31229 of January 21, 1911, will be revoked accordingly and a new T. D. will be published in the following form:

To Collectors and other Officers of Customs and others concerned:

Upon a further consideration of the laws of the United Kingdom of Great Britain and Ireland relating to the allowance granted upon exported British spirits, and upon consideration of additional laws and facts in relation thereto submitted by the Officers of the said Government, the Department has reached the conclusion that the said allowance is not a bounty or grant within the meaning of Section 6 of the Tariff Act of August 5, 1909. Consequently, no counter-vailing duty will be assessed upon British spirits imported into the United States. T. D. 31229 is hereby revoked.

No. 62 Commercial. 17869. The Secretary of State for Foreign Affairs. April 21, 1914.

To Sir C. Spring-Rice.

5 x 5A.



## EXHIBIT 10.

Custom House, London, E. C., April 18, 1914.

SIR: I am desired by the Commissioners of Customs and Excise to transmit the enclosed memorandum relative to the proposed imposition of countervailing duties on British Spirits imported into the United States, and to suggest that the memorandum might be forwarded to the Foreign office for communication, as suggested by Sir C. Spring-Rice, to the United States Government.

I am, &c.,  
(Signed)

J. P. BRYNE.

The Secretary to the Treasury, &c., &c., &c.

Allowance Paid on the Exportation of British Spirits.

The Commissioners of Customs and Excise have examined the despatch from the United States Consul at Edinburgh, dated August 5, 1913, and desire to offer the following observations thereon:

The view of the Consul that there is no justification for the grant of allowance on the exportation of British spirits and that payment of such allowance is "purely a grant or bounty," appears to be based upon a complete misconception of the facts of the case. The Consul's argument rests upon the erroneous assumption that the exporter received the allowance under the guise of compensation for the costs to him of the revenue regulations governing blending and bottling operations on spirits in bonded warehouses. These regulations have, however, no bearing upon the question at issue. The allowances, as explained in detail in the memorandum from this Department of March 1, 1911, are granted solely on account of the statutory restrictions on the actual manufacture of the spirits and the effect of these restrictions in increasing the cost of production to the distiller or rectifier, as the case may be. The regulations under which the subsequent operations of vatting, blending and bottling are carried out in bonded warehouses are not and never have been considered in connection with the export allowances.

The Commissioners find nothing in the despatch of the Consul to lead them to modify in any respect their memorandum of the 1st March, 1911. Nor do they think they can usefully add anything to that Memorandum except to point out that the allegation that the allowance is "simply a grant to exporters" is sufficiently disproved by the fact that an allowance is also granted to spirit used in the production of industrial spirit to be used in the United Kingdom. This fact was quoted in 1911 by the Treasury of the United States in support of the revocation of the order imposing countervailing duties in the following terms:

United States Treasury Memorandum of April 17, 1911.

"Fifth. The fact that the British Revenue Act of August 4, 1906, Part 1, Section 1, provides that:

'Where any spirits are used by an authorized methylator for making industrial methylated spirits, or are received by any person for use in any art or manufacture under Section 8 of the Finance Act, 1902, the like allowance shall be paid to the authorized methylator, or to the person by whom the spirits as is payable on the exportation of plain British spirits.'

The effect of this Act is clearly to indicate that the allowance is a bona fide allowance as stated in that Act of 1860 and is not in any sense an export bounty."

With reference to the statement that "users of neutral spirits (manufacturing chemists and others)," "dealers in wines" and "dealers in whiskey who are not exporters" in the United Kingdom regard the allowances as a bounty, the Commissioners can only say that they have no knowledge to what extent this view is held, though they doubt whether it is widely prevalent. It may be pointed out, that these classes of traders have no interest in the matter, and that probably, few are even aware that there is such an allowance and that still fewer are acquainted with the grounds on which *is* it granted.

Custom House, 18th April, 1914.

67

## EXHIBIT 11.

The following is a statement made by Mr. Peter Dawson, one of the largest Scotch distillers. It is submitted as being an accurate statement of the conditions surrounding the foreign producer and setting forth the reason for the allowance of three-pence per gallon on exported British spirits.

The distillers and producers of spirits in Great Britain are required by the Internal Revenue Law to close down their business on Saturday night at twelve o'clock, thus compelling all fires to go cold and requiring the reheating of all mask, kettles, stills, etc., on Monday morning of every week.

In addition to this, excise men supervise every step that is taken and keep all machines, still, vats and warehouses under lock and key so that no step in the process of distillation can be taken except under the direct supervision of the Government officials.

Separate and distinct records must be kept in particular books and in a particular manner regarding every mash and all the liquor produced therefrom subject to the inspection of the Government officials at all times, and report must be made concerning the business of distilling required from time to time to the Government.

No spirits are distilled in Great Britain except in bond and under the above method of supervision, which is exceedingly onerous and expensive, and especially so on account of the requirement that all the distillation of liquor must cease on Saturday night and remain for 24 hours in abeyance.

The Internal Revenue Law of Great Britain imposes a tax upon

all spirits produced for potable purposes, but since all distillers produce spirits for both potable purposes and for methylating for commercial use, as well as for export, it becomes necessary that the tax should be estimated upon the entire amount of production although paid only upon goods manufactured for domestic potable use. It thus appears that the expense incident to full obedience with the Internal Revenue Law applied to all liquor distilled whether the same subsequently is sold for methylated commercial purpose or is exported, and as this expense is very considerable the Government has, for more than fifty years, made an allowance per gallon to the distiller upon so much of his product as is turned into methylated commercial channels or being potable is exported from the country.

This allowance was originally two-pence per gallon, but is now, and has been for many years past, three-pence per gallon, and is allowed against all liquor produced for methylated commercial purposes and against all liquor exported from the country.

It is also a fact that all importations of potable liquor pay not only the Internal Revenue Tax, but an addition of four-pence per gallon before the same may be released for the British market.

The expense referred to above incident upon the distillation and production of British spirits is created in the distillation of the same and in the subsequent blending and bottling of the same, the larger part of the expense being created by the requirement of the law specifically relating to the distillation and production, and the smaller part of the expense following on under the requirements of the law covering blending and bottling.

It will thus appear that the purpose of the Government was to raise a revenue as against the distillation, production, blending and bottling of potable spirits for domestic use only, and to that end it has authorized a separate account to be kept of all distilled spirits devoted to methylated commercial use and all distilled spirits exported from the country. Upon such it returns to the distiller, producer, blender or bottler an allowance of three-pence as being approximately the costs per gallon imposed against these spirits by compliance with the Internal Revenue regulations.

It has been represented to the Government with full force and effect by the British distillers, producers, blenders and bottlers, that the allowance should be made four-pence per gallon to make good to them the expense incident to their business, and the Government's attention has been called to the fact that the additional import tax of four-pence on the gallon imposed upon foreign spirits in order that the same may compete with British spirits upon an even basis is indication that the above expense is four-pence rather than three-pence, but thus far the British Government has declined to increase the allowance.

It is to be remembered that the requirement of the law forbidding the conduct of business from midnight on Saturday until one o'clock Monday morning applies solely to the distillation of British spirits, while all other manufacturing businesses are permitted to

continue steadily from northward to northward, or from your's end to your's end, with no legal restriction whatsoever.

It must further be noted during the period of time from Monday morning at one o'clock to Saturday night at twelve o'clock the business of distilling is conducted under the immediate eye of the excise officials, but that the hours are limited daily from nine o'clock to four o'clock, and if it becomes necessary to pay an extra fee for two hours additional attendance on the part of the Government officers.

110 West Chester St.,  
Columbo, 21st April, 1884.

The Right Honorable Sir Edward Grey, M. P., His Majesty's  
Secretary of State for Foreign Affairs.

Sir: On 22 February, 1883, we took the liberty of addressing you with reference to a proposal then made by the United States Government to place a countervailing duty upon all British spirits entering the States on the plea that the export allowance which had been granted by the British Government ever since 1860 on spirits shipped beyond the United Kingdom represented a bounty given to the British distiller.

Through the influence which was brought to bear upon the U. S. Government at that time, the proposal was fortunately abandoned, and a distinct injustice to the British distiller was thereby avoided.

We now learn that the subject has again been revived by the U. S. Government, through a report which they have received from the State Planning, the American Consul at Edinburgh, and that there is every possibility, unless your influence again prevails, of the U. S. Government adopting their former proposal.

We have had the opportunity of seeing a copy of Consul Fleming's report (sent home from the States) and we unhesitatingly state that the arguments employed by him, and the conclusions arrived at are based on inaccurate knowledge of the true facts. No one has ever suggested that the trouble and bother of British spirits for export is compared with any restrictions which do not equally apply to spirits consumed in this country. What we do say is that the whole question of distilling in this country, whether the spirits are destined for home or export, are carried on under restrictions which are deemed necessary to protect the large revenue derived from that product. In the case of spirits consumed in this country the same restrictions may be regarded as an addition to the duty which is collected in each, and as between distillers at home as one received a preference over the other.

When, however, the British distiller is put into competition with the French distiller, these restrictions then become a real burden, and it was to meet this condition that the duties on foreign spirits entering this country was imposed, while, exempting the revenue to its total restriction on allowance is given on British spirits exported.

72 In the words of Sir H. Prinsep, an Ex-Chairman of the Indian Revenue, "Both the allowance and the duty which date from 1800 aim at the same purpose which is not to put the British producer of spirits in a position of advantage as compared with his foreign or colonial competitor, but to save him from being placed in a position of disadvantage."

The allowance can in no sense be regarded as in the nature of a bounty and we have every confidence that you will so represent the position to the United States as will lead them to finally withdraw their present proposal.

We have the honor to remain, sir, your most obedient servants.

*For the Scottish Whisky Exporters Assn., Chairman.*

*Before of the Board.*

Board of United States General Appraisers.

No. 1692.

ASAP. D. Snow & Co. et al., Appellants.

v.

The United States, Appellees.

The petitioners above named, having applied to the United States Court of Customs Appeals for a review of the questions of law and fact involved in a decision of the Board of United States General Appraisers in the above case, and the said Court having ordered the Board to transmit to said Court the record, evidence, exhibits, and samples, together with a certified statement of the facts involved in the case and its decision thereon:

Now, therefore, pursuant to said order, the Board of United States General Appraisers does hereby transmit to said Court the record, evidence, exhibits, and samples in said case, together with a certified statement of the facts involved in the case, and also its decision thereon.

This return specifically comprises the following:

1. Protest 772,572, 00,000 with the report of the collector of customs thereon;

73 2. The other protests enumerated in the petition with the reports relative thereto, enclosed herewith in a separate envelope;

3. The record of admission;

4. The stipulation of appeal, which is included in the return in Case 1596, *Nichols vs. United States*;

5. Exhibits 1 to 11, referred to in the stipulation, returned with the record in said 1596;

6. A copy of the Board's decision in question, C. A. 7716 (T. D. *Winter*).

Witness the Honorable Jerry B. Sullivan, President of the Board,  
this sixth day of October, A. D. 1915.

[SEAL.]

D. P. DUTCHER,  
*Chief Clerk, G. V. O., Countervailing Duty on Spirits.*

Protest 772,173/66,890.

Alex. D. Shaw & Co.,  
76 Broad Street, New York.

NEW YORK, Oct. 9th, 1914.

Hon. Collector of Customs, New York City, N. Y.

DEAR SIR: We, Knauth, Nachod & Kühne, of 15 William Street, New York City, as provided in the Tariff Act of the United States of October 3rd, 1914, entitled "An Act to reduce Tariff Duties and to provide revenue for the Government and for other purposes," Section III, paragraph N, and Section IV, paragraph E, respectfully protest against the additional duty levied on the herein-below described goods, under Treasury Decision 34,466 of May 25th, 1914.

The ground of this protest is that said additional duty was unlawfully levied for the reason that no "bounty or grant upon the exportation of" said goods has been "paid or bestowed, directly or indirectly" within the intent and meaning of said paragraph E of Section IV of said Act.

Entry No. 23282 [232827? J. H. S.]. Vessel, "St. Paul." Entered 8/3/14. Bond No. —. Liquidated 9/30/14. Marks and Nos., I. C. Bishop, Inc.

73 And we respectfully demand that said additional duty be refunded to us as improperly imposed.

Fee of \$1.—enclosed.

Respectfully yours,

KNAUTH, NACHOD & KUHNE.  
R. BENNIE, *Attorney.*

Endorsed: Custom House, New York. Received Oct. 9, 1914.

To the Hon. Board of U. S. General Appraisers:

SIR: I hereby give notice that I represent Knauth, Nachod & Kuhne in the matter of their protest number 772,173, and respectfully request that all notices in connection therewith be sent to me.

Respectfully,

W. P. PREBLE.

150 Nassau St., New York City.

Whiskey C. D. Apel.

Endorsed: U. S. Gen. Appr's. Received Apr. 30, 1915.

*Report of the Collector.*

Jan. 14, 1915.

Respectfully referred to the Board of U. S. General Appraisers for decision.

The merchandise consists of British spirits imported from the United Kingdom of Great Britain and Ireland. Following the instructions contained in T. D. 34466, and 34752, that an export bounty is allowed on plain British spirits, of 3 pence per British proof gallon and 5 pence per gallon on compound spirits, a countervailing duty, equal to the bounty paid, was assessed under paragraph E of section IV, Act of 1913, in addition to the regular rate of duty provided for in schedule H of said act.

The protest was lodged and fee paid within statutory time.

DUDLEY FIELD MALONE, *Collector.*

74        775,118, etc.

May 17, 1915. Submitted on stipulation in 772,188, etc.  
For decision of Board see page 20, supra.

75        In the United States Court of Customs Appeals.

No. 1594.

G. S. NICHOLAS & COMPANY et al.

v.

THE UNITED STATES.

*Certificate of the Attorney General.*

In pursuance of the Act entitled "An Act to amend section 195 of the Act entitled 'An Act to codify, revive and amend the laws relating to the judiciary, approved March 3, 1911,'" approved August 22, 1914, I, T. W. Gregory, Attorney General of the United States, do certify that the case now pending and undecided in the Court of Customs Appeals, entitled "No. 1594, G. S. Nicholas & Company et al. v. The United States," is of such importance as to render expedient its review by the Supreme Court.

Given under my hand this 22nd day of January, 1916.

T. W. GREGORY,  
*Attorney General.*

Filed U. S. Court of Customs Appeals January 26, 1916. Arthur B. Shelton, Clerk.



76 In the United States Court of Customs Appeals.

No. 1602.

ALEX. D. SHAW & COMPANY and KNAUTH, NACHOD & KUHNE.

V.

THE UNITED STATES.

*Certificate of the Attorney General.*

In pursuance of the Act entitled "An Act to amend section 195 of the Act entitled 'An Act to codify, revive and amend the laws relating to the judiciary, approved March 3, 1911,'" approved August 22, 1914, I, T. W. Gregory, Attorney General of the United States, do certify that the case now pending and undecided in the Court of Customs Appeals, entitled "No. 1602, Alex. D. Shaw & Company and Knauth, Nachod & Kuhne, vs. The United States," is of such importance as to render expedient its review by the Supreme Court.

Given under my hand this 22nd day of January, 1916.

T. W. GREGORY,  
*Attorney General.*

Filed United States Court of Customs Appeals, January 26, 1916.  
Arthur B. Shelton, Clerk.

77 United States Court of Customs Appeals.

At a Session of said Court Continued and Held at the City of Washington, Pursuant to Adjournment, on This 9th Day of February, A. D. 1916.

Present: The Honorable Robert M. Montgomery, Presiding Judge, and the Honorables James F. Smith, Orion M. Barber, Marion De Vries and George E. Martin, Associate Judges.

The court was opened for business in due form.

\* \* \* \* \*

No. 1594.

G. S. NICHOLAS & Co., E. LA MONTAGNE'S SONS, F. L. ROBERTS &  
Co., S. S. PIERCE Co., Appellants,

v.

THE UNITED STATES, Appellee.

No. 1602.

ALEX. D. SHAW &amp; Co., KNAUTH, NACHOD &amp; KUHNE, Appellants,

v.

THE UNITED STATES, Appellee.

Said appeals came on to be heard before the court and after hearing the arguments of counsel the cases were taken under advisement by the court.

\* \* \* \* \*

(Signed)

ROBERT M. MONTGOMERY,

*Presiding Judge.*

78 United States Court of Customs Appeals.

G. S. NICHOLAS &amp; Co. et al.

v.

THE UNITED STATES.

and

ALEX. D. SHAW &amp; Co. et al.

v.

THE UNITED STATES.

February Term, 1916, Calendar Nos. 9 and 10, Suit Nos. 1594 and 1602.

Before Montgomery, Smith, Barber, De Vries, and Martin, Judges.

DE VRIES, *Judge*, delivered the opinion of the Court.

This appeal presents for determination the question of the legality of a countervailing duty levied upon spirits imported into the United States from the United Kingdom of Great Britain and Ireland. The countervailing duty was assessed in addition to the regular duties under the provisions of paragraph E of section IV of the tariff act of 1913 (38 Stat. L., 114), which reads:

E. That whenever any country, dependency, colony, province or other political subdivision of government shall pay or bestow, directly or indirectly, any bounty or grant upon the exportation of any article or merchandise from such country, dependency, colony,

79 province or other political subdivision of government, and such article or merchandise is dutiable under the provisions of this Act, then upon the importation of any such article or merchandise into the United States, whether the same shall be imported directly from the country of production or otherwise, and whether such article or merchandise is imported in the same condition as when exported from the country of production or has been changed in condition by manufacture or otherwise, there shall be levied and paid, in all such cases, in addition to the duties otherwise imposed by this Act, an additional duty equal to the net amount of such bounty or grant, however, the same be paid or bestowed. The net amount of all such bounties or grants shall be from time to time ascertained, determined and declared by the Secretary of the Treasury, who shall make all needful regulations for the identification of such articles and merchandise, and for the assessment and collection of such additional duties.

On May 25, 1914 (T. D. 34466), the Secretary of the Treasury ascertained, determined and declared, with due pertinent regulations, that the United Kingdom of Great Britain and Ireland paid or bestowed on plain British spirits 3 pence and on British compounded spirits 5 pence per gallon, computed at hydrometer proof, and directed countervailing duties conformably levied. This importation was subsequently made at the port of New York and duties accordingly assessed by the collector of customs at that port. The importers duly protested.

The protests were overruled by the Board of General Appraisers, whereupon the importers appealed to this court praying a reversal of that judgment.

The laws of Great Britain, the foundation of the action of the collector, originated with the act of Parliament granting excise duties on British spirits and on spirits imported from the Channel Islands of August 28, 1860 (23 and 24 Vict. ch. 129).

80 Section 1 of that act levied duties upon every gallon of spirits of the strength of hydrometer proof which on and after certain dates therein mentioned were or should be distilled within the United Kingdom, or which having been distilled therein were on said dates in the stock or possession of any distiller, or in any duty-free warehouse, or in removing to such warehouse, and which should be after the several named days taken out for consumption within the United Kingdom.

Section IV of the act provided:

IV. In consideration of the Loss and Hindrance caused by Excise Regulations in the Distillation and Rectification of Spirits in the United Kingdom, there shall be paid to any Distiller or Proprietor of such Spirits *on the exportation* thereof from a Duty-free Warehouse, or *on depositing the same in* a Customs Warehouse, on or after the Fifth Day of March One thousand eight hundred and sixty, the Allowance of Twopence per Gallon computed at Hydrometer Proof, and to any licensed Rectifier who on or after the said last-mentioned Day has or shall have *deposited* in a Customs Warehouse Spirits distilled and rectified in the United Kingdom the following

Allowances; (that is to say), on rectified Spirits of the Nature of British Compounds not exceeding Eleven Degrees over Proof as ascertained by Sykes' Hydrometer an Allowance of Threepence per gallon, and on Spirits of the Nature of Spirits of Wine an Allowance of Twopence per gallon, such Gallons being computed respectively at Hydrometer Proof.

In 1865 these provisions were amended by section 12 of the act of Parliament (28 and 29 Vict. ch. 98), as follows:

Sect. 12. The allowance of 3d per gallon granted by Section 4 of the Act passed in the 23rd and 24th years of Her Majesty's reign, Chapter 129 of any licensed rectifier in respect of rectified spirits of the nature of British Compounds not exceeding 11 degrees over proof, as ascertained by Sykes' Hydrometer, shall be payable to any  
81 licensed rectifier or compounder in respect of any compound spirits *deposited* under the provisions of this Act in any warehouse of customs or excise, and *exported* to foreign parts, or used in a customs warehouse for rectifying wines or for any other purpose to which foreign or Colonial spirits may be applied under the laws or regulations of the customs; but such allowance shall not be paid until the certificate from the proper officer of customs shall be produced to the officer of excise appointed to pay the said allowance, that such spirits have been *actually exported* or *used* as aforesaid.

In 1880 Parliament (43 and 44 Vict., ch. 24), amended all previous acts relating to the manufacture, sale, exportation and use and dutiability of spirits in Great Britain by an act entitled "The Spirits Act, 1880." This act provided also for various warehouses. Pertinent provisions thereof are as follows:

"Spirits" means spirits of any description, and includes all liquors mixed with spirits, and all mixtures, compounds, or preparations, made with spirits:

\* \* \* \* \*  
"British spirits" means spirits liable to a duty of Excise.

\* \* \* \* \*  
"Plain spirits" means any British spirits (except low wines and feints), which have not had any flavour communicated thereto or ingredient or material mixed therewith.

\* \* \* \* \*  
"Spirits of Wine" means rectified spirits of the strength of not less than forty-three degrees above proof.

\* \* \* \* \*  
"British compounds" means spirits redistilled or which have had any flavour communicated thereto, or ingredient or material mixed therewith:

\* \* \* \* \*  
82 "Methylate" means to mix spirits with some substance in such manner as to render the mixture unfit for use as a beverage, and "methylated spirits" means spirits so mixed to the satisfaction of the Commissioners:

"Warehouse" means any warehouse approved or provided for the deposit of spirits.

"Distiller's warehouse" means an approved warehouse on the premises of a distiller.

"Excise warehouse" means a warehouse approved or provided by the Commissioners as a general warehouse for the deposit of spirits.

"Customs warehouse" means a warehouse approved or provided by the Commissioners of Customs for the deposit of spirits:

\* \* \* \* \*

13. (1) Every distiller must, to the satisfaction of the Commissioners, provide a spirit store and cause it to be properly secured.

(2) The spirit store must be kept locked by the officer in charge of the distillery at all times except when he is in attendance.

\* \* \* \* \*

45. Subject to the pre-cribed regulations and the prescribed security spirits may be removed from a distiller's spirit store *for exportation* or for ship's stores without payment of duty.

\* \* \* \* \*

49. (1) A distiller may provide a warehouse on his premises for warehousing spirits distilled on the same premises without payment of duty.

(2) Every such warehouse must be approved by the Commissioners and entered by the distiller.

50. (1) The Commissioners may approve Excise warehouses for warehousing spirits *without payment of duty*. Such warehouses shall be for the general accommodation of persons desiring to warehouse spirits.

\* \* \* \* \*

83 54. The Commissioners may, if they think fit, themselves provide Excise warehouses, and may charge for spirits warehoused therein, warehouse rent at the prescribed rate, not exceeding one penny per week for forty gallons. This rate must be paid by the *proprietor* of the spirits to the collector, and shall be a lien on all spirits warehoused in the same warehouse belonging to such proprietor.

\* \* \* \* \*

57. Where a distiller has given the prescribed security under which *he may remove spirits from one warehouse to another*, he may, subject to the provisions of this Act and to the prescribed regulations, remove any spirits directly from his store to an Excise or Customs warehouse, and all spirits so removed shall be deemed to have been first warehoused in the distiller's warehouse and removed therefrom under the provisions of this Act.

\* \* \* \* \*

62. Spirits in a distiller's warehouse may, on the prescribed security being given by the distiller, *be transferred to a purchaser*, but no further transfer may be made of them remaining in the same warehouse.

63. British spirits warehoused in an Excise warehouse in the *name of a distiller or dealer* may be transferred into the *name of a purchaser* on his producing to the officer in charge of the warehouse a written order for the delivery thereof, signed by the proprietor of the spirits, and countersigned by the proprietor or occupier of the warehouse or his servant acting for him at the warehouse. Spirits so transferred shall be discharged from all claim in respect of duties, penalties, or forfeitures to which the transferor is liable, but *may not be delivered out of the warehouse for home consumption until payment of the duties chargeable thereon.*

\* \* \* \* \*

72. Subject to the provisions of this Act, spirits warehoused may, in accordance with the prescribed regulations, and on the  
84 prescribed security being given, and at the risk of the *proprietor thereof*, be removed to any other warehouse except a distiller's warehouse.

\* \* \* \* \*

75. (1) Spirits may be delivered from *a warehouse* for home consumption after the full duty chargeable thereon has been paid.

\* \* \* \* \*

79. Where British spirits are delivered from *a Customs warehouse for home consumption*, and in all cases where duty is payable on such spirits in such warehouse, the duty payable shall be collected according to the laws and regulations for like spirits in an Excise warehouse by the officers of Customs under the direction of the Commissioners of Customs and paid into the Bank of England to the account of the Receiver General of Inland Revenue and dealt with as other duties of Excise.

80. Where foreign spirits are delivered *from an Excise warehouse for home consumption* the duty payable thereon shall be collected by an officer under the direction of the Commissioners *according to the laws and regulations for like spirits in a Customs warehouse*, and paid into the Bank of England to the account of the Commissioners of Customs, and dealt with as other duties of Customs.

81. (1) *The proprietor of spirits* in a distiller's or Excise warehouse may, on giving notice and the prescribed bond, remove the spirits *for exportation without payment of duty.*

82. Spirits warehoused, may, on the prescribed bond being given, subject to the prescribed regulations and subject to the conditions, regulations, and restrictions required by any Act in force for the time being be delivered out without payment of duty *for ship's stores.*

83. Spirits warehoused may, on the prescribed bond being given, subject to the prescribed regulations, be delivered out, without payment of duty, *for methylation.*

\* \* \* \* \*

85 95. (13) Spirits warehoused for exportation or ship's stores under this section must not be delivered out otherwise than directly from the warehouse to the ship in which they are to be exported or used as stores.

\* \* \* \* \*

117. (1) Methylated spirits shall, subject to the provisions of this Act, be exempt from duty.

(2) If a rectifier methylates duty-paid spirits he shall be allowed a drawback at the rate of duty chargeable on British spirits of the like strength.

\* \* \* \* \*

123. (5) Foreign spirits may not be used for methylation until the difference between the duty of Customs chargeable thereon and the duty of Excise chargeable on British spirits has been paid.

By an Act to grant certain duties of customs and inland revenue August 6, 1885 (48 and 49 Vict., ch. 5, sec. 3), it was further provided:

3. (1) Where any spirits distilled and rectified in the United Kingdom *are exported* from an Excise or Customs warehouse, or are used in any such warehouse for fortifying wines, or for any other purpose to which foreign spirits may be applied, there *shall be paid* in respect of every gallon of such spirits, computed at hydrometer proof, the following allowances: that is to say,

In respect of plain British spirits, and spirits of the wine, an allowance of twopence, and

In respect of British compound spirits, an allowance of fourpence.

(2) The allowance *shall be paid* in the case of spirits exported, *to the person who shall have given security for the exportation*, and in the case of spirits used in warehouse, *to the person upon whose written request the spirits shall have been so used*.

The finance act of May 30, 1895 (58 Vict., ch. 16, secs. 6 and 7), enacted:

86 6. Regulations of the Commissioners of Inland Revenue, under section one hundred and fifty-nine of the Spirits Act, 1880, may regulate the removal *for exportation* of methylated spirits, and where spirits used for methylation are removed from a place of methylation and exported in accordance with those regulations, there shall be paid *to the exporter* an allowance of two pence for every gallon of such spirits, computed of hydrometer proof, and subsection three of the Customs and Inland Revenue Act of 1885 shall apply, as if the spirits were exported and the allowance made in pursuance of that section?

7. After the thirty-first day of December one thousand eight hundred and ninety-five, section one hundred and nineteen of the Customs Consolidation Act, 1876 (which limits the *time for the payment of a drawback* on the exportation of goods), *shall extend to the payment of any allowance* in respect of spirits exported, used, or deposited, which is payable under section three of the Customs and Inland Revenue Act, 1885, as amended by section twenty-one of the Revenue Act, 1889, *and to an allowance* in respect of methylated spirits *exported*, which is payable under this Act, *and to the payment of any drawback* of excise which is allowed on the exportation of any goods, in like manner, as if it were in terms made applicable thereto, and the date of user or deposit were the date of shipment.



The Finance Act of July 22, 1902, fixed the rates herein applied by the collector. Section 5 thereof, subdivision 1, reads:

5. (1) As from the seventeenth day of June nineteen hundred and two, the Customs duty of ten shillings and fourpence on imported spirits, imposed by Section seven of the Customs and Inland Revenue Act, 1881, shall, as respects spirits other than rum and brandy, be ten shillings and fivepence, and the allowance of twopence and fourpence *payable* in respect of spirits under section three of the Customs and Inland Revenue Act, 1885, and section six of the Finance Act, 1895, shall be respectively threepence and fivepence.

87 Section 8, subdivision 1 thereof, relates to and permits the withdrawal from warehouse of other than methylated goods to be used in manufactures:

8. (1) Where, in the case of any art or manufacture carried on by any person in which the use of spirits is required, it shall be proved to the satisfaction of the Commissioners of Inland Revenue that the use of methylated spirits is unsuitable or detrimental, they may, if they think fit, authorize that person to receive spirits, without payment of duty, for use in the art or manufacture upon giving security to their satisfaction that he will use the spirits in the art or manufacture, and for no other purpose, and the spirits so used shall be exempt from duty:

Provided that foreign spirits may not be so received or used until the difference between the duty of customs chargeable thereon and the duty of excise chargeable on British spirits has been paid.

Regulative thereof is subdivision 1 of section 1 of the act of August 4, 1903 (6th Ed., VII., ch. 20), reading:

1. (1) Where any spirits are used by an authorized methylator for making industrial methylated spirits, or are received by any person for use in any art or manufacture under section eight of the Finance Act, 1902, the like allowance *shall be paid* to the authorized methylator *or to the person by whom the spirits are received*, as the case may be, in respect of those spirits *as is payable on the exportation* of plain British spirits, and the Commissioners may by regulations prescribe the time and manner of the payment of the allowance and the proof to be given that the spirits have been or are to be used as aforesaid.

All italics in the foregoing excerpts are ours.

By statute (2d Ed. VII, ch. 7; and 6th Ed. VII, ch. 20; and General Order 20/03), universities, colleges, etc., may receive

88 on bond from a distillery or from an excise or customs warehouse limited quantities of British spirits free of duty, and, an allowance of 3 pence per proof gallon is granted in respect to such spirits (Ham's Year Book, 1914, page 165).

In addition to the specific provisions for drawback, *supra*, the act of July 22, 1902 (2d Ed. VII, ch. 7), (Finance Act of 1902), in the second schedule, provided generally for "Drawbacks to be allowed on articles exported or deposited in any bonded warehouse for use as ships' stores, or removed to the Isle of Man, if it is proved

to the satisfaction of the Commissioners of Customs that the duties on importation have been duly paid."

While the foregoing acts express the system and methods of levy, later enactments fix the present rates. These are shown by Ham's Year Book of 1914, Exhibit A, being a quasi-official authority published by special permission of the Commissioners of Customs and Excise.

The spirit "allowance" continues as in 1902, 3 pence and 5 pence per proof gallon as herein assessed (Ham's Year Book, 1914, page 85).

The excise of internal revenue duty under the Finance Acts, 1900, 1904, 1905, 1907, and 1910, is per proof gallon, 14 shillings 9 pence (Ham's Year Book, 1914, page 88).

The import duty upon spirits per proof gallon if imported in casks is 15 shillings 1 penny to 15 shillings 3 pence; if imported in bottles 16 shillings 1 penny to 16 shillings 3 pence (Ham's Year Book, 1914, third part, page 149).

The conspicuously pertinent matters presented by the foregoing legislative status may be epitomized as follows: There are three kinds of warehouses: (1) A Crown or Customs Warehouse owned by the government; (2) an Excise or General Warehouse owned by some one not a distiller and controlled by the government; (3) a Distiller's private Warehouse controlled by the government. That from each of these warehouses spirits may be removed for export without paying duty; but if the "allowance" is to be paid they must

89 be removed from one of the two former only and be taken direct to the ship for exportation or as stores; that goods for home consumption may be removed from any one of these warehouses upon payment of the duties; that all goods including those for export may be sold and transferred while warehoused; and, when the "allowance" is paid upon exportation it is paid to the owner or proprietor and not the manufacturer or distiller unless the latter be the exporter. So with goods delivered for ships' stores, for methylation or university use the "allowance" is paid to the seller. Upon all potable spirits manufactured and consumed in Great Britain there is laid an inland revenue tax of 14 shillings 9 pence per proof gallon. Upon all such imported in casks 15 shillings 1 penny to 15 shillings 3 pence, and in bottle 16 shillings 1 penny to 16 shillings 3 pence per proof gallon import duty is laid. Upon exportation such British spirits are relieved of all inland revenue tax and in addition thereto an "allowance" is paid out of the public treasury to the exporter of 3 pence per gallon if pure spirits and 5 pence per gallon if compounded. Wherefore, the manufacturer, distiller, dealer or exporter can place his goods in a foreign country at less home cost than he could in his domestic market; although, by reason of the import duty being higher than the excise charged, he is protected in his home market to the extent of that difference.

It must be borne in mind that this appeal concerns only the "allowance" paid exporters of 3 pence and 5 pence and not the excise duty of 14 shillings 9 pence which latter is never paid upon

spirits exported from the United Kingdom of Great Britain. The status of the latter is not here in question.

This appeal presents the question, is the former payment a "demon or indirect bounty or grant" within paragraph E of section IV of the tariff act of 1913 (38 Stat. L., 114), *supra*? We think it is and so hold.

90 While the briefs and oral argument of counsel for the importers are largely confined to and contend for the narrower use of the word "bounty" as controlling herein, the word "grant," equally a part of the statute and not so confined in amplitude, is but little discussed. The difference in the scope of the words "bounty" and "grant" was elaborately treated in an opinion by Judge Somerville, as a member of the Board of General Appraisers, and later adopted as the opinion of the Circuit Court of Appeals, Fourth Circuit, in *Downs v. United States* (113 Fed. Rep., 144), in passing upon section 5 of the tariff act of 1897 (30 Stat. L., 374), which was the predecessor paragraph of this and employed those exact words. The fact that the word "bounty" alone appeared in the similar provisions of the tariff acts of 1890 (26 Stat. L., 547), paragraph 237, and 1894 (28 Stat. L., 509), paragraph 192½, relating to countervailing duties upon sugar, was by Congress in the later and present acts supplemented by the additional word "grant" is significant of a purpose to extend the latitude of the provision. The familiar rule of statutory interpretation which regards every word of a statute a distinct and different meaning requires that some force and meaning be given the word "grant" beyond and in addition to that enjoyed by the word "bounty." *Market Company v. Hoffman* (101 U. S., 112, 115); *Stephens v. Chandler Station* (174 U. S., 445). A statute will not be construed so as to virtually asseverate a distinct meaning of a sentence. *Adams v. Woods* (2 Cranch, 6 U. S., 336).

Whatever the view as to that matter, however, the court is of the opinion that this "allowance" to exporters is well within the word "bounty or grant" as used in said paragraph E. In *Downs v. United States* (187 U. S., 496, 501), the Supreme Court in interpreting the parent paragraph to this, section 5 of the tariff act of 1897 (30 Stat. L., 131, 205), and approving the definition of

91 "bounty" by Webster and Bouvier (*Law Dictionary*), and the Brussels Conference of 1894, stated:

A bounty is defined by Webster as "a premium offered or given to induce men to enlist in the public service; or to encourage any branch of industry, or husbandry or manufactures." And by Bouvier, as "an additional benefit conferred upon or a compensation paid to a class of persons." In a conference of representatives of the principal European powers, specially convened at Brussels in 1894 for the purpose of considering the question of sugar bounties, the definition of bounty was examined by the conference sitting in committee, who made the following report:

"The conference, while reserving the question of mitigations and provisional disposition that may be authorized if and in by reason of exceptional situations, is of opinion that bounties should

duties is levied, are subjected to be all the advantages conferred on manufacturers and sellers, by the local legislation of the State, and that, directly or indirectly, are borne by the public treasury.

A bounty may be fixed so that a certain amount is paid upon the production or exportation of particular articles, of which the act of Congress of 1890, allowing a bounty upon the production of cane and the act of March 30th, 1897, allowing a drawback upon certain articles exported, are examples. Or, indeed, by the remission of taxes upon the exportation of articles which are subjected to a tax when sold or consumed in the country of their production, of which our laws, permitting drawback of spirits to export the same without payment of internal revenue tax or other duties, is an example. *United States v. Evanson*, 189 U. S., 11.

In *Evanson v. United States*, 189 U. S., 11, the Supreme Court granting appeal of the notice declared:

"The certificate of duty made that the German duty is imposed on merchandise when 'sold by the manufacturer direct to the consumer or sold to the market of Germany,' and 'is collected when the finished product goes into consumption in Germany.' In the act above when the manufacturer sells the articles price variable is, and the purchaser also pays some value, is sufficient quantity to the German market pays a price covering the tax, and that is the price for the merchandise when bought and sold in that market."

Whether to encourage exportation and the introduction of German goods into other markets, the German Government could result in effect to tax and pay a bounty or draw a drawback.

That it is found that in cases of those goods when "produced in kind, or consumed article in kind, for exportation to a foreign country, that that is entitled to the German Government, and is called 'drawback' of tax, as distinguished from being refunded as a rebate." The act of the word "drawback" does not change the character of the tax. It is a special advantage extended to government in aid of manufacturers and trade, having the same effect as a bounty or drawback. It is one of the definition of drawback, it is "a sum granted to the exporter a commodity offered to sale to be exported and sold in the foreign market on the same terms as if — but not less than at all."

"The tax against the substance, not the substance, will flow, not the same to which there are no demands." Whether the thing may be distinguished as "allowance" or "drawback" or "bounty" or "grant" or "drawback" or other matter not. The question for the court is whether or not it is within the class of goods sought to "drawback" is applied to the paragraph of the tariff act. The construction must be given the paragraph to the court which will most effectively accomplish its manifest purpose. *Arnold v. United States*, 187 U. S., 2, 303, 307.

There is nothing obscure, distant, remote, or even ambiguous

about this language which has been as to the particular words  
a part of all our tariff acts from 1897 to and including the  
present act. (Section 3 tariff act of 1897 (30 Stat. L. 151),  
section 3 tariff act of 1909 (35 Stat. L. 11), paragraph E, section  
21, tariff act of 1913 (38 Stat. L. 114). Its plain, explicit and  
unequivocal purpose is: Whenever a foreign power or dependency  
or any political subdivision of a government shall give any aid or  
advantage to exporters of goods imported into this country (there-  
from wholly they may be sold for less in competition with our  
domestic goods, to that extent by this paragraph, the duties fixed  
in the schedule of the act are increased. It was a tariff Congress  
not seeking to equalize regardless of whatever means or in whatever  
manner or form or for whatever purpose it was done. The statute  
intended itself, as a member of an act calculated to maintain an  
equalized protection, increased or otherwise, as against payments  
or profits of any kind by foreign powers resulting in an equalization  
direct or to any extent directly or indirectly. Whosoever in endeavor  
to that obvious purpose the court does not feel at liberty to accept  
any construction or technical definitions of the words "country" or  
"goods" suggested, but to construe the paragraph a meaning, well  
within its language, that will best effectuate the unquestioned con-  
gressional purpose.

A great portion of the heads and second is devoted to an effort  
to show these payments to exporters of spirits by the United King-  
dom to be an equivalent of certain extra costs attending the excise  
collection. "In consideration of the loss and hindrance caused by  
excise regulations."

The case of the applicants herein may be said to be well epitomized  
in exhibit A annex A, which was a document signed on March 1,  
1911, by the Chairman, Deputy Chairman, and Secretary of the  
Board of Customs and Excise in London, reading:

The duty on British spirits is very heavy, and involves the  
necessity of special precautions being taken to prevent any  
spirit escaping the duty. These precautions include the in-  
spection upon the manufacture of a number of statutory  
requirements and restrictions in connection with the plant and  
methods of manufacture, which considerably increase the cost of  
manufacture. The allowances on exportation are intended to be an  
equivalent and no more than an equivalent of this extra cost.

The object has been kept in view in fixing the actual amount of  
the allowance.

The allowance was originally fixed by Mr. Gladstone in 1849  
after prolonged consultation between the Revenue Authorities and  
the traders affected. The traders were required to formulate their  
claims to the fullest detail, stating what restrictions in their opinion  
increased the cost of manufacture and the exact amount of extra  
cost attributable to each; every item was closely scrutinized by the  
Revenue Authorities, some being disallowed altogether, and others  
allowed in whole or in part, with the result that the allowance was  
fixed at a figure which the Revenue Authorities accepted as not ex-  
ceeding the loss caused by revenue restrictions.

The fact that the payment made by the foreign government was estimated or calculated upon a certain basis or in consideration of extra burdens imposed by domestic excise laws, or for any other reason of domestic government or policy commending itself to the wisdom of Parliament, is not controlling with our courts. The sole inquiry is, do the results of such acts stimulate exportation or give a special advantage by affording aid from the public treasury whereby such goods may when exported be sold in competition with ours for less. The Supreme Court in *Allen v. Smith* (173 U. S., 389, 402), has concisely characterized bounties and their origin, saying:

Bounties granted by a government are never pure donations, but are allowed either in consideration of services rendered or to be rendered, objects of public interest to be obtained, production or manufacture to be stimulated, or moral obligations to be recognized.

These arguments may well have been addressed as they were to those charged with due adjustment of the added burdens of an excise system: or, possibly appropriate matters of diplomatic exchanges looking to remedial action, diplomatic or legislative, but the courts must look to the law as enacted and the facts as presented and determine therefrom whether or not the acts done produce results within the terms of the law. If it be true that the excise system delineated intentionally or accidentally results in "an advantage to exporters of spirits to this country from the United Kingdom of Great Britain, which directly or indirectly is borne by the public treasury," or affords "a premium in like manner given or paid to encourage any branch of industry or manufacture," likewise exporting, such falls within this paragraph (*Downs v. United States* 187 U. S., 490, 502); and it matters not, nor is it made by Congress an exception thereto, that it is an incidental, indirect or unintended result of the British Government endeavoring to in part repay or compensate its manufacturers and distillers for a burdensome excise system. The courts are concerned with results and not intentions.

Indeed, the efficiency of this instrumentality to recoup the manufacturers and distillers this extra cost, is not a little difficult to grasp. The fact that under the acts of Parliament this payment may be made not to the manufacturer or distiller who suffers the extra cost but to any purchaser of the spirits while warehoused, who may after purchase withdraw them either for export or consumption, is expressive that the system is at least more heedful of the interests of the exporter who has suffered no extra burdens than of the manufacturer or distiller who has. While business acumen dictates that the presence of the possibility of this payment upon export would impel the distiller or manufacturer to exact that much more for his goods, the fact that they may be sold and transferred while in a warehouse from which they may be withdrawn either for consumption or export, denies the manufacturer or distiller the certainty of that knowledge necessary to support or enforce the exaction.

In the view that undoubtedly a more equitable and natural system of recoupment of disbursements, based upon extra expenses incurred by all the manufacturers and distillers in manufacturing and distilling all spirits produced in Great Britain, would be had by payment to those who suffer the extra cost directly in due proportions instead of to a much more limited and necessarily indefinite number of exporters (including vendors of ships' stores) and "proprietors" selling universities, necessarily uncertain quantities of spirits, who did not so suffer, serious doubts naturally arise not only as to due receipt of the repayment by its intended beneficiaries but as to other actual though unintended results of the system. Wherefore, the justification made, that the system is one solely in compensation of loss and hindrance caused by excise laws and regulations, which for that reason takes the payment out of paragraph E of section IV of the tariff act of 1913 (38 Stat. L., 114), loses its effectiveness as the system is so palpably inadequate therefor and not confined thereto that the contention fails. Of course, of the wisdom and policy of the laws of a sister nation this court is not concerned. We are concerned only with their results upon the commerce of the country as designed to be protected by our duly enacted laws. This examination of the statutes and regulations is had because they seem convincing that their natural, commercial operation must utterly fail to insure recoupment of these extra costs to the manufacturers and distillers, whereas, they permit exporters and vendors, not suffering such extra costs, to enjoy these payments. The security and certainty of actual repayment to the manufacturer or distiller seem too remote and a pure gift or bonus to the exporter too proximate to support the argument of recoupment made, even were it of force in the case.

97 Nor does the fact that like payment is made to proprietors or manufacturers of foods sold for ships' stores, methylation and for use in the universities, change the legal or actual status under our laws of the payments made exporters. As a matter of fact goods for ships' stores are for exportation. As to such the considerations had need not be repeated. An allowance for goods sold universities probably encourages attendance and education by enabling students to purchase them cheaper. That undoubtedly is the result if not the purpose. So the allowance for methylated spirits and goods under section 8 of the Finance Act of 1902 are in aid and encouragement of manufacturers. But, if that is the result or purpose in such cases why not so as to exported goods? And if so does not such a payment result in an advantage to and encourage the exporter in foreign competition? And, is that not precisely what Congress sought to equalize by this paragraph? Upon the whole, however, how does the extension of the bounty of a generous government to more than one class of subjects change its character in either case? If A pays B a sum of money without consideration it neither changes nor affects the character of that act should he likewise pay C the same.

One of counsel for the appellants urges that as spirits can only be exported from excise or customs warehouses this payment might



upon the ground of added expense of the necessary passing through such warehouses thereby be warranted. There is nothing in the record as to the relative warehouse charges to support the suggestion and it is contradictory of the theory of the case chiefly relied upon by appellants. It is sufficient to point out that this argument finds its complete refutation by section 59, Spirits Act of 1880, which reads:

59. The proprietor of any plain spirits reimported into the United Kingdom may, on the issue by the Commissioners of Customs of a bill of store for the spirits, and on the repayment of the allowance granted on the exportation thereof, warehouse the spirits in an excise or customs warehouse.

By this paragraph upon reimportation of exported spirits the exporter can rewarehouse them in either an excise or customs warehouse and the granted allowance is returned. If the "allowance" is for warehouse charges by such warehouse or for "passing through" them, because export can only be had therefrom, why return this charge after they have been warehoused therein not only once but twice?

Incidentally, this status develops the thought that the return to the public treasury of this "allowance" deprives the exporter, or let us say the manufacturer or distiller, of that modicum of allowance due for goods which having already undergone excise regulations have had cast upon them this extra cost for which the returned monies were intended compensation.

This section (59) is further illuminative of the effects of the operation of this excise system as to our industries and tariffs. Thereby it is made apparent that while this payment is made to the importer upon "exportation" it is only paid upon that exportation which actually enters our commercial field in competition with the sale and consumption of our spirits; for the section provides that if the exported spirits are returned to the United Kingdom the payment made upon exportation must be refunded the public treasury. This payment therefore becomes absolute only when the spirits enter export competition. The effectiveness of the act is confined to actual competition in our domestic trade with our goods. It is a payment in truth not upon exportation but upon the spirits entering and remaining in foreign trade. Wherefore, this section 59 of the Spirits Act of 1880 manifests an ungenerous disregard of the declared beneficent purposes of the act to reimburse for extra costs in that although the "extra costs" of the burdensome  
99 excise laws have been sustained in the production and export of the particular spirits, unless they enter and remain in actual foreign competition and trade, although they undergo the additional burden of rewarehousing and its incidental extra costs, such spirits are denied any participation in the afforded relief.

The well recognized difference between drawback and bounties, grants or allowances, are nowhere more emphasized or exemplified than in the acts of Parliament quoted. The acts and administrative orders of the Kingdom of Great Britain have ever regarded them as separate and distinct. Allowances are direct payments out

of the public treasury upon goods usually not previously imported. Drawback is repayment of monies previously paid in by the exporters upon goods previously imported. These acts are a sufficient answer to the claim herein, were it not otherwise answered and were that of virtue, that these "allowances" are justified as "drawbacks." Whether or not drawback is a bounty or grant is not an issue herein and as to that the court expresses no opinion. These payments are not drawbacks but direct payments.

Appellants rely upon a uniformity of departmental practice long continued as supporting their protests. Reference is had in that particular to the existence in some form of the statutes of Great Britain from and including the act of 1860. That this Government would be bound by the existence of a statute of Great Britain of which it presumptively has taken and can take no notice even in its courts of record unless therein proven, is, in the opinion of this court, without any force. While the first statute of Great Britain upon the subject was passed in 1860, in 1880 there was a general revision of the spirits act, and in 1889 a revision thereof by the finance and revenue acts. Paragraph E of the tariff act of 1913 (38 Stat. L., 114), in its parent, general form first appeared in the tariff act of 1897 (30 Stat. L., 151), was substantially re-enacted in 1909 (36 Stat. L., 11), and again in 1913 (38 Stat. L., 114).

The changes were as to detail of the bounties and grants 100 alike provided for in each act. Prior thereto there was no general countervailing provision in our tariff laws. The tariff acts of 1890 (26 Stat. L., 567), and 1894 (28 Stat. L., 509), contained such a provision confined to sugar alone. Under the circumstances, admitting the rule contended for, there could be no construction to paragraph E of the tariff act of 1913 (38 Stat. L., 114), until at least the enactment of the tariff act of 1897 (30 Stat. L., 151). It could not be construed before it was enacted. After enacted as section 5 of the tariff act of 1897 (30 Stat. L., 151), it was construed as contended for by appellants herein until April 18, 1911, (T. D. 31490). The Departmental action negatives rather than supports the contention of appellants. The first interpretation made by the Department was January 21, 1911 (T. D. 31229), wherein it held that the payments by the United Kingdom of Great Britain here in question were within the provisions of said section 6 of the tariff act of 1909 (36 Stat. L., 11).

Upon representation that decision of the Treasury Department was revoked April 18, 1911 (T. D. 31490). On May 25, 1914 (T. D. 34466), the Department returned to its original ruling of January 21, 1911. Without other interpretation, of which there was much by the duly constituted tribunals, this alternating practice of approximately three years would not bring appellants within the rule of long continued and uniform departmental practice.

Robertson v. Downing (127 U. S., 607);

Merritt v. Cameron (137 U. S., 542, 551);

Brennan v. United States (136 Fed. Rep., 743, 746);

United States v. Midwest Oil Co. (236 U. S., 459, 476).

On the other hand the construction or interpretation of an inferior Federal court (or reviewing board) prevails over that  
101 of an administrative department. *Steinmetz v. Allen* (192 U. S., 543).

Early after the enactment of the parent provision, as section 5 of the tariff act of 1897 (30 Stat. L., 151), and continuously throughout its statutory existence as a part of that act, and of the tariff acts of 1909 (36 Stat. L., 11), and 1913 (38 Stat. L., 114), a uniform construction had been placed thereupon by the Board of General Appraisers and the courts contrary in principle to the contention of the appellants. The first case decided by the Board of General Appraisers was in April, 1898 (G. A. 4133; T. D. 19256), construing section 5 of the tariff act of 1897 (30 Stat. L., 151). The point here in question was not there in issue. In September, 1898, the matter of the amplitude of the parent provision, section 5 of the tariff act of 1897 (30 Stat. L., 151), was reviewed by the Board of General Appraisers (G. A. 4261; T. D. 20039). The case concerned an excise of 27 florins on raw and refined sugars produced in the Netherlands. There was a protection upon it or 2.12 florins which was deducted from the excise tax upon domestic consumption while upon exportation no tax was exacted, but at the same time the bounty was paid. The net result was that if the sugar was consumed in Holland it would have paid a tax of 24.78 florins. Upon exportation, however, no tax was paid and the shipper received a bonus of 2.12 florins. Pertinently the board said:

Whatever words may be used to express, explain, or conceal the meaning of the provisions of the Netherlands sugar law \* \* \* whether the bounties are termed deductions, remissions of excise, or what not—the table we have given illustrates the result and shows that the Netherlands do give a substantial bounty or grant, indirect if not direct, on the exportation of sugar.

On appeal to the Circuit Court for the Southern District of New York the decision of the board was reversed, *Hills v. United*  
102 *States* (99 Fed. Rep., 425). The Government appealed to the Circuit Court of Appeals, Second Circuit, which reversed the Circuit Court and sustained the board, *United States v. Hills Bros. Co.* (107 Fed. Rep., 107). Judge Lacombe in delivering the opinion took occasion to say:

Undoubtedly, this premium or "deduction" is called a bounty on production, and is a bounty on production; but the other provisions of the law have the practical effect of making it, from the standpoint of other countries, a bounty on exportation. The result of the whole act is no different, so far as the foreign country is concerned, from what it would be had it provided: All sugar producers shall receive a bounty paid in cash from the revenues of the government of so much per 100 kilos. Those who export their sugar may keep this bounty, those who do not export it must forthwith return it to the government.

Again, in April, 1901, the subject was exhaustively considered by the board in the Russian sugar bounty cases commencing with G. A. 4912 (T. D. 22984). The facts of this case are available in its ulti-

mate decision by the Supreme Court (*Downs v. United States* (187 U. S., 496)). The board held that the Russian laws were within the provisions of section 5 of the tariff act of 1897 (30 Stat. L., 151). The decision of the board was rendered by Judge Somerville, is one of great merit, and was approved and adopted by the Circuit Court of Appeals, Fourth Circuit, as its opinion. *Downs v. United States*, (113 Fed. Rep., 114). Part of the adopted language here pertinent was as follows:

It is important to observe, in the consideration of this subject, that section 5 of the tariff act of 1897, under which this case arises, does not use the word "bounty" in any narrow or technical meaning. It embraces "any bounty or grant" bestowed or conferred by the government, whether directly or indirectly. The word  
 103 "grant" is more comprehensive in meaning than the term "bounty." It implies the conferring by the sovereign power of some valuable privilege, franchise, or other right of like character, upon a corporation, person, or class of persons. \* \* \* Indeed, the word "grant," in its broad signification, may well include the remission of a tax already levied and assessed by the authority of government. \* \* \* The use of the word "bonification" does not change the character of this remission. \* \* \* And in making this inquiry it is immaterial in what manner the "bounty or grant" was paid or bestowed. The law regards substances, not shadows, things not names. \* \* \* Looked at from the Russian standpoint, these advantages might, perhaps, be described as a bounty on production; but (in the language of the circuit court of appeals in the *Hills Bros. Case*, supra), "from the standpoint of other countries," they become a bounty or grant on exportation. \* \* \* It is immaterial, we may add, whether the price obtained for the exported sugar reaped a profit or inflicted a loss upon the manufacturer or producer. The simple inquiry is whether at whatever price he may have sold it, he received a bounty or grant of pecuniary value upon its exportation.

The case on certiorari was reviewed by the Supreme Court in *Downs v. United States* (187 U. S., 496). The language of that court affirming the foregoing is even stronger and is quoted supra.

In October, 1901, the board again rendered decision construing this section in *G. A. 5012* (T. D. 23325), wherein the issue presented in the *Hills Brothers Company case*, supra, was reviewed, the protest overruled, and the duty countervailed. That it is the effect or result of the operation of the foreign law and not the name which is ascribed to the payment that controls decision was held in two similar cases arising in *G. A. 5306* (T. D. 24306), and *G. A. 5592* (T. D. 25035). the latter construing paragraph 393 of the  
 104 tariff act of 1897 (30 Stat. L. 151), the pertinent part of which was as follows:

393. \* \* \* Provided, That if any country or dependency shall impose an export duty on pulp wood exported to the United States, the amount of such export duty shall be added, as an additional duty, to the duties herein imposed upon wood pulp, when imported from such country or dependency.

The board countervailed the duty. On appeal to the Circuit

Court, Northern District of New York, *Myers v. United States* (140 Fed. Rep., 548, 654), the following pertinent language was used:

It is not called an export duty by that Dominion, but is imposed as a license fee. The merchandise cannot escape our law, because we call it export duty and Quebec or Ontario calls it a license. The question is, What is it in effect and in fact?

The Circuit Court of Appeals affirmed the board and Circuit Court except upon grounds not involving the question herein involved. See *Myers & Co. v. United States* (144 Fed. Rep., 1021). Subsequently that line of decisions was followed in *Reckendorn v. United States* (162 Fed. Rep. 1141). Certiorari to the Supreme Court of the United States was refused, *Reckendorn v. United States* (214 U. S., 514).

All claimed and shown by appellants as to the reason or purpose of this payment and the method or basis adopted for its calculation or estimation may be assumed, and the court accepts as true. All this, however, stops short of the real issue in the case, which, as stated, is the actual result or effect such action has when the exported spirits enter our markets in competition with our goods.

Whatever may have been the purpose or consideration of the payment made upon exportation of these spirits, the incontrovertible fact is present that it necessarily encouraged their exportation and enabled the exporter to sell them at a proportionately less price in competition with the goods of this country. It is a payment directly to the exporter for and upon exportation and the entry of said goods in our body commerce. The doctrine of the case, therefore, may be paraphrased from the language of the Supreme Court in *Allen v. Smith*, *supra*, "whether allowed it in consideration of services rendered or to be rendered, or with the object of a public interest to be obtained, production or manufacture to be stimulated, or a moral obligation to be recognized, it is a bounty." The decision of the Board of General Appraisers is affirmed.

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### United States Court of Customs Appeals.

At a session of said court continued and held at the city of Washington, pursuant to adjournment, on this 12th day of May, A. D. 1916.

Present: the Honorable Robert M. Montgomery, Presiding Judge, and the Honorables James F. Smith, Orion M. Barber, Marion De Vries and George E. Martin, Associate Judges.

The court was opened for business in due form.

\* \* \* \* \*

No. 1594.

G. S. NICHOLAS & Co., E. LA MONTAGNE'S SONS, F. L. ROBERTS &  
Co., S. S. PIERCE Co., Appellants,

v.

THE UNITED STATES, Appellee.

No. 1602.

ALEX. D. SHAW &amp; Co., KNAUTH, NACHOD &amp; KUHNE, Appellants,

v.

THE UNITED STATES, Appellee.

Said appeals having heretofore been brought on to be heard before  
the court and due consideration thereon having been had, it  
is—

107 Ordered that the decision of the Board of United States  
General Appraisers be, and the same is hereby, affirmed.

\* \* \* \* \*

(Signed)

ROBERT M. MONTGOMERY,  
*Presiding Judge.*

United States Court of Customs Appeals.

No. 1594.

NICHOLAS &amp; Co. et al.

vs.

THE UNITED STATES.

No. 1602.

SHAW &amp; Co. et al.

vs.

THE UNITED STATES.

*Motion to Stay Mandate.*

Your petitioners respectfully represent that the above entitled cases  
were decided adversely to the appellants by this Court on May 12,  
1916; that under Rule 12 of this Court the mandate will not issue  
until June 11, 1916; that certificates have been filed as required by  
statute, signed by the Attorney General certifying that these cases  
are of such importance as to render expedient their review by the  
Supreme Court; that pursuant to the amendment of August 22, 1914,  
to Section 195 (38 U. S. Stat., 703) petitions for writ of certiorari  
must be filed within sixty days next after the issue by this Court of  
its mandate; that your petitioners are informed and believe that

the Supreme Court is about to adjourn for the term and that  
 108 Monday, June 5, is the last day on which motions will be received.

Wherefore your petitioners respectfully pray, that, to enable their statutory rights be preserved, the issue of mandates may be stayed until September 18, 1916.

COMSTOCK & WASHBURN,  
*Attorneys for Nicholas & Co. et al.*  
 W. P. PREBLE,  
*Attorney for Shaw & Co. et al.*

No objection.

BERT HANSON,  
*Assistant Attorney General.*

Filed U. S. Court of Customs Appeals, June 2, 1916. Arthur B. Shelton, Clerk.

109 United States Court of Customs Appeals.

At a session of said court continued and held at the city of Washington, pursuant to adjournment, on this 2nd day of June, A. D. 1916.

Present: the Honorable Robert M. Montgomery, Presiding Judge, and the Honorables James F. Smith, Orion M. Barber, and George E. Martin, Associate Judges.

The court was opened for business in due form.

No. 1594.

G. S. NICHOLAS & Co., E. LA MONTAGNE'S SONS, F. L. ROBERTS & Co., S. S. PIERCE Co., Appellants,

v.

THE UNITED STATES, Appellee.

No. 1602.

ALEX. D. SHAW & Co., KNAUTH, NACHOD & KUHNE, Appellants,

v.

THE UNITED STATES, Appellee.

Upon motion of appellants to stay the issue of the mandates in said appeals until September 18, 1916, it is—

Ordered that said motion be, and the same is hereby, granted.

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(Signed)

ROBERT M. MONTGOMERY,  
*Presiding Judge.*



110

## United States Court of Customs Appeals.

In accordance with the above motion and order the final mandate, consisting of a certified copy of the order of the Court of the 12th day of May, 1916, was issued to the Board of United States General Appraisers on the 18th day of September, 1916.

ARTHUR B. SHELTON, *Clerk.*

## United States Court of Customs Appeals.

No. 1594.

NICHOLAS & Co. et al.

vs.

THE UNITED STATES.

No. 1602.

SHAW & Co. et al.

vs.

THE UNITED STATES.

I, Arthur B. Shelton, Clerk of the United States Court of Customs Appeal, do hereby certify that the attached pages, numbered 1 to 110, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the above entitled appeals, as the same remain of record and on file in this office.

Witness my hand and the seal of this court this 30th day of October, A. D. 1916.

[Seal of the United States Court of Customs Appeals.]

ARTHUR B. SHELTON, *Clerk.*

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1594.

UNITED STATES OF AMERICA, ss:

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the United States Court of Customs Appeals, Greeting:

Being informed that there is now pending before you a suit in which G. S. Nicholas & Company et al. are appellants, and The United States is appellee, No. 1594, which suit was removed into the said Court of Customs Appeals by virtue of an appeal from the Board of United States General Appraisers, and we, being

willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said Court of Customs

Appeals and removed into the Supreme Court of the United  
112 States. Do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the twenty-fourth day of November, in the year of our Lord one thousand nine hundred and sixteen.

JAMES D. MAHER,  
*Clerk of the Supreme Court  
of the United States.*

[Endorsed:] 1594. File No. 25,587. Supreme Court of the United States. No. 757, October Term, 1916. G. S. Nicholas & Company et al. vs. The United States. Writ of Certiorari. Filed United States Court of Customs Appeals, Dec. 2, 1916. Arthur B. Shelton, Clerk.

113 In the Supreme Court of the United States, October Term, 1916.

No. 757.

G. S. NICHOLAS & Co. et al., Petitioners,  
vs.  
THE UNITED STATES.

*Stipulation as to Return to Writ of Certiorari.*

It is hereby stipulated by counsel for the parties to the above-entitled cause that the certified copy of the transcript of the record on file in the Supreme Court shall constitute the return of the Clerk of the Court of Customs Appeals to the writ of certiorari issued herein.

December 24, 1916.

ALBERT W. WASHBURN,  
*Counsel for Petitioners.*  
JNO. W. DAVIS,  
*Solicitor General.*

II.

114 [Endorsed:] No. 757. In the Supreme Court of the United States, October Term, 1916. G. S. Nicholas & Co. et al., Petitioners, vs. The United States. Stipulation as to Return to Writ of Certiorari. Constock & Washburn, Attorneys for Petitioners, 12 Broadway, N. Y.

113

*Return to writ.**United States Court of Customs Appeals.*

In obedience to the command of the within writ of certiorari and in pursuance of the stipulation of the parties which is hereto attached, I hereby certify that the transcript of record furnished with the application for the writ of certiorari in the case of *C. S. Nicholas & Co. et al v. The United States*, No. 1194, is a full, true and complete copy of the transcript of the record and proceedings in said appeal.

In testimony whereof I hereunto subscribe my name and affix the seal of the United States Court of Customs Appeals this 16th day of December, A. D. 1904.

[Seal of the United States Court of Customs Appeals.]

ARTHUR B. CHASEMAN,

*Chief of the United States*

*Court of Customs Appeals.*

114 [Endorsed.] 717/25,107.

117 [Endorsed.] File No. 21,347. Supreme Court U. S., Cases for Term, 1905. Term No. 717. *C. S. Nicholas & Co. et al, Petitioners, vs. The United States. Writ of Certiorari and Return.* Filed December 5, 1904.

118 *United States ex Relator, vs.*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the United States Court of Customs Appeals, Certifying:

Being informed that there is now pending before you a writ in which *Alex. D. Shaw & Company et al.* are appellants, and *The United States* is appellee, No. 1195, which writ was removed into the said Court of Customs Appeals by virtue of an appeal from the Board of United States General Appraisers, and so, being willing for certain reasons that the said writ and the record and proceedings therein should be certified by the said Court of Customs Appeals and removed into the Supreme Court of the United States.

120 I do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said case, so that the said Supreme Court may see reason as of right and according to law ought to be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the twenty-fourth day of November, in the year of our Lord one thousand nine hundred and seven.

EDWARD D. WHITE,

*Chief of the Supreme Court*

*of the United States.*





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# Supreme Court of the United States

DOCKET THIS, 1881

G. S. NICHOLAS & CO. ET AL.

Plaintiffs

THE UNITED STATES

ALEX. D. BRADY & CO. ET AL.

Plaintiffs

THE UNITED STATES

7 8 6

No 5

7 8 6

RETURNED FOR WANT OF CERTIFICATE TO THE UNITED STATES COURT OF CUSTOMS APPEALS AND EXCISE DISTRICT

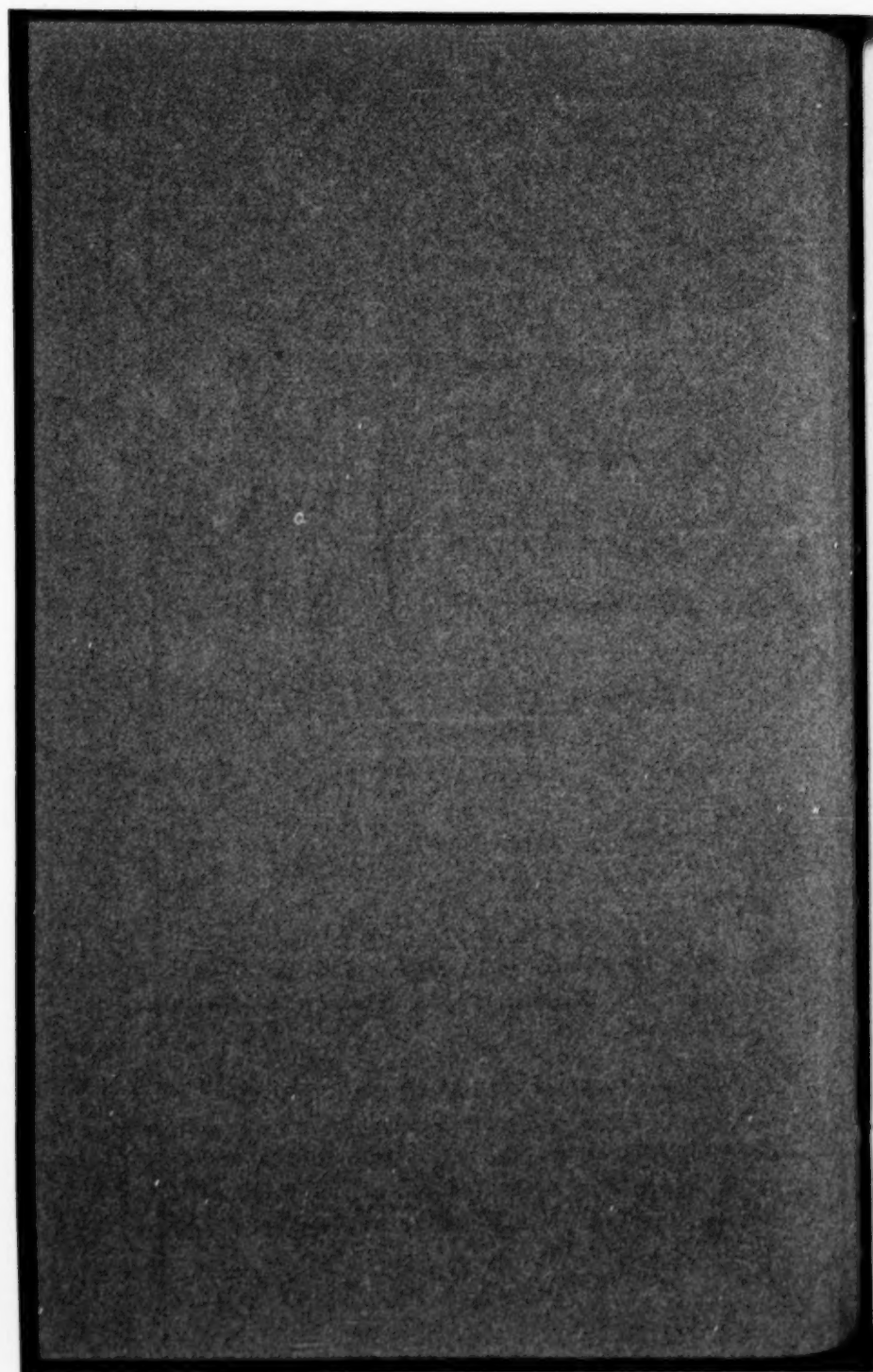
ALBERT H. WARRICK

Attorney for G. S. Nicholas & Co. et al.

W. E. FURBER

Attorney for Alex. D. Brady & Co. et al.

G. S. NICHOLAS & CO. ET AL.





IN THE  
SUPREME COURT OF THE UNITED STATES,  
OCTOBER TERM, 1916.

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G. S. NICHOLAS & CO., ET AL.,  
Petitioners,

VS.

THE UNITED STATES.

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ALEX. D. SHAW & CO., ET AL.,  
Petitioners,

VS.

THE UNITED STATES.

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**Petition for Writs of Certiorari to the Court of  
Customs Appeals, and Brief in Support  
Thereof.**

The petitioners pray for writs of *certiorari* to the Court of Customs Appeals to review the decision and judgment of that Court rendered on the 12th day of May, 1916, in the above entitled cases, affirming the decision of the Board of U. S. General Appraisers (Rec., 20). The mandate upon decision

was issued September 18, 1916, by the Court of Customs Appeals.

This petition is filed pursuant to the Act of August 22, 1914, amending Sec. 195, Act of March 3, 1911 (63d Cong., 2d Sess., Ch. 267), which provides :

“ An act to amend section one hundred and ninety-five of the Act entitled ‘ An Act to codify, revise, and amend the laws relating to the judiciary,’ approved March third, nineteen hundred and eleven.

“ Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section one hundred and ninety-five of an Act entitled ‘ An Act to codify, revise, and amend the laws relating to the judiciary,’ approved March third, nineteen hundred and eleven, be, and hereby is, amended so as to read as follows :

“ SEC. 195. That the Court of Customs Appeals established by this chapter shall exercise exclusive appellate jurisdiction to review by appeal, as herein provided, final decisions by a board of general appraisers in all cases as to the construction of the law and the facts respecting the classification of merchandise and the rate of duty imposed thereon under such classifications, and the fees and charges connected therewith, and all appealable questions as to the jurisdiction of said board, and all appealable questions as to the laws and regulations governing the collection of the customs revenues ; and the judgments and decrees of said Court of Customs Appeals shall be final in all such cases : Provided, however, That in any case in which the judgment or decree of the Court of Customs Appeals is made final by the provisions of this title, it shall be competent for the Supreme Court, upon the petition of either party, filed within sixty days next after the issue by the Court of Customs Appeals of its mandate upon decision, in any case in which there is drawn in question the construction of the Constitution of the United States, or any part thereof, or of any treaty made pursuant thereto, or

in any other case *when the Attorney General of the United States shall, before the decision of the Court of Customs Appeals is rendered, file with the court a certificate to the effect that the case is of such importance as to render expedient its review by the Supreme Court, to require, by certiorari or otherwise, such case to be certified to the Supreme Court for its review and determination, with the same power and authority in the case as if it had been carried by appeal or writ of error to the Supreme Court: And provided further, That this Act shall not apply to any case involving only the construction of section one, or any portion thereof, of an Act entitled 'An Act to provide revenue, equalize duties, and encourage the industries of the United States, and for other purposes,' approved August fifth, nineteen hundred and nine, nor to any case involving the construction of section two of an Act entitled 'An Act to promote reciprocal trade relations with the Dominion of Canada, and for other purposes,' approved July twenty-sixth, nineteen hundred and eleven.* (Italics ours).

Approved, August 22, 1914.

The Attorney General on January 26, 1916, in accordance with the foregoing statute, filed this certificate with the Court of Customs Appeals, to-wit:

" IN THE UNITED STATES COURT OF CUSTOMS APPEALS.

G. S. NICHOLAS & COMPANY

ET AL.,

v.

THE UNITED STATES.

No. 1594.

#### CERTIFICATE OF THE ATTORNEY GENERAL.

In pursuance of the Act entitled "An Act to amend section 195 of the Act entitled 'An Act to codify, revise

and amend the laws relating to the judiciary, approved March 3, 1911,' " approved August 22, 1914, I, T. W. Gregory, Attorney General of the United States, do certify that the case now pending and undecided in the Court of Customs Appeals, entitled "No. 1594, G. S. Nicholas & Company *et al.* v. The United States," is of such importance as to render expedient its review by the Supreme Court.

Given under my hand this 22nd day of January, 1916.

Filed January 26, 1916.

U. S. Ct. Cust. Appls.

T. W. GREGORY,  
Attorney General."

A similar certificate was filed in the Shaw case, suit number 1602.

We ask for a writ of *certiorari* because the decree of the Court of Customs Appeals is made final by statute; this petition is filed within the prescribed sixty days; the case involves international commercial relations between the United States and Great Britain and the practice of the Treasury Department relating thereto under statutes which may involve treaty rights; and because the case is of such importance as to render expedient its review by this Court as certified by the Attorney General of the United States.

The British Government has an excise system peculiar to itself with respect to spirits. An excise or internal revenue tax is not imposed upon spirits as such, *but only upon potable spirits when entering into domestic consumption*. The Government officially recognizes that the special precautions taken by it to prevent such spirits escaping the duty results in the imposition upon the manufacturer of statutory restrictions in connection with his plant and method of manufacture, which considerably enhance his natural costs of production (Exhibit 6, Annex A, Rec., 37).

To compensate the manufacturer, at least in part, for these

extra expenses, which are no part of the normal cost of manufacture, and which the Government for its own ends requires him to incur, the British Government has for over half a century made an allowance under certain contingencies or in certain cases fixed per proof gallon upon plain and compounded spirits. At the present time these allowances amount to 3d. per gallon upon plain and 5d. per gallon upon compounded spirits. They are not always made when spirits are destined for exportation and are not limited to export spirits, but they may or may not include such spirits.

The question presented for determination is : Does the British Government pay or bestow directly or indirectly any bounty or grant upon the exportation of spirits within the meaning of Section 4, Paragraph E, Tariff act of October 3, 1913. Paragraph E provides as follows :

“ That whenever any country, dependency, colony, province, or other political subdivision of government shall pay or bestow, directly or indirectly, any bounty or grant upon the exportation of any article or merchandise from such country, dependency, colony, province, or other political subdivision of government, and such article or merchandise is dutiable under the provisions of this Act, then upon the importation of any such article or merchandise into the United States, whether the same shall be imported directly from the country of production or otherwise, and whether such article or merchandise is imported in the same condition as when exported from the country of production or has been changed in condition by re-manufacture or otherwise, there shall be levied and paid, in all such cases, in addition to the duties otherwise imposed by this Act, an additional duty equal to the net amount of such bounty or grant, however the same be paid or bestowed. The net amount of all such bounties or grants shall be from time to time ascertained, determined, and declared by the Secretary of the Treasury, who shall

make all needful regulations for the identification of such articles and merchandise and for the assessment and collection of such additional duties."

What has been called the countervailing duty section of the tariff was incorporated in our tariff law in 1897. Paragraph E of the existing law is virtually the same as section 5 of the Act of July 24, 1897. During all the years that the countervailing duty provision has been on the statute books, no contention was ever made prior to 1911 that this allowance, which has been a part of the British fiscal system since 1860, was viewed in any sense by our Government as an export bounty. In that year, after a thorough investigation of the whole situation by our Treasury Department, the conclusion was finally reached that the allowances were not bounties or grants within the meaning of Section 6 of the Tariff Act of August 5, 1909. See Treasury Decision 31490 of April 18, 1911, revoking T. D. 31229 of January 21, 1911 :

" Upon a further consideration of the laws of the United Kingdom of Great Britain and Ireland relating to the *allowance* granted upon exported British spirits, and in view of additional laws and facts in relation thereto submitted by officers of the said Government, the department has reached the conclusion that the said *allowance* is not a bounty or grant within the meaning of section 6 of the tariff act of August 5, 1909. Consequently no countervailing duty will be assessed upon British spirits imported into the United States, T. D. 31229 is hereby revoked."

T. D. 31490.

The reasons in support of these conclusions are set forth in a departmental memorandum dated April 17, 1911 which is a part of Exhibit 9 (R., 62) in this case. The present assessment under the law of 1913 is by virtue of T. D. 34466 dated May 25, 1914.

We have, therefore, a long continued executive practice in this case extending over many years, which was ratified and reaffirmed by the Treasury Department in 1911. Fostered by that practice the trade affected has grown up. The countervailing duty provision (Section 4, Paragraph E) of the law of 1913, which in no way differs from Section 6 of the law of 1909, was enacted by Congress in the light of the executive interpretation placed upon the law of 1909. It must be presumed that Congress re-enacted Paragraph E with full knowledge of the rule of construction set forth in T. D. 31490. The familiar rule of the legal presumption flowing from this state of affairs, *i. e.*, long continued executive practice and legislative sanction is therefore in full play in this case. *United States vs. Post*, 3 Ct. Cust. Appls., 260. *Brennan vs. United States*, 136 Fed. Rep., 743. *U. S. vs. Midwest Oil Co.*, 236 U. S., 459.

In the latter case there was a question as to the right of the President to withdraw public lands from private acquisition without special authorization by Congress after Congress had opened them to occupation. This Court said (*U. S. vs. Midwest Oil Co.*, 236 U. S., 459, 472) :

"It may be argued that while these facts and rulings prove a usage, they do not establish its validity, but government is a practical affair, intended for practical men. Both officers, lawmakers, and citizens naturally adjust themselves to any long continued action of the executive department, on the presumption that unauthorized acts would not have been allowed to be so often repeated as to crystallize into a regular practice. That presumption is not reasoning in a circle, but the basis of a wise and quieting rule that in determining the meaning of a statute or the existence of a power weight shall be given to the usage itself, even when the validity of the practice is the subject of investigation."

"This principle, recognized in every jurisdiction, was first applied by this court in the often cited case of *Stuart vs. Laird*, 1 Cranch, 299, 309." (*Italics ours*).



### The British Law and the Reason for It.

The laws applicable are set forth in Exhibit 1 (Enc., VI) as follows :

- (a) August 26, 1900 (22 and 24 Vict. Cap. 220) ;
- (b) Section 12 of Chapter 90 of 26 and 27 Vict. 1903 ;
- (c) August 26, 1900 (43 and 44 Vict.), usually cited as the " Spirits Act of 1900 " ;
- (d) Sections 16 and 17 of 44 and 45 Vict. Cap. 23, 1901 ;
- (e) August 4, 1905 (29 and 30 Vict. Cap. 22) ;
- (f) August 26, 1900 (22 and 24 Vict. Cap. 43), usually cited as the " Revenue Act of 1900 " ;
- (g) May 30, 1905 (29 Vict. Cap. 24) ;
- (h) July 22, 1902 (3d Ed. VII, Cap. 7) ;
- (i) August 4, 1906 (4th Ed. VII, Cap. 20).

When the question as to whether the British allowances did or did not constitute a bounty or grant, was the subject of investigation by our Government in 1911, Ambassador Bryce transmitted to Secretary of State Lane, a report of the British Board of Customs & Excise in which it is stated (Exhibit 6, Annex A, Enc. VI) :

" These allowances have formed an essential feature of our system of taxing spirits ever since 1800, when, in consequence of the Cordon treaty with France, the former prohibitive duties were abolished. It is significant that the abolition of the allowances as part of our fiscal system, as far from being associated with any idea of a bounty, took place at the very time when free-trade principles secured the most complete acceptance in this country.

" The object of the allowances originally was, and still is, not to place the manufacturer of British spirit in a position of advantage, as compared with his foreign competitor in the foreign market, but to pro-

most like them being placed in a collection of American songs is that marked as a result of the opposition which the very Government, for the very same reason, has to come in the process of manufacture.

"The duty on British spirits is very heavy, and renders the economy of special provisions being taken to prevent any spirit smuggling the duty." \* \* \*

Section IV. of the original Act of August 28, 1888, thus stated its object in a preamble:

"In consideration of the laws and regulations enacted by British legislation in the Distillation and Rectification of Spirits in the United Kingdom." \* \* \*

The objection mentioned in the House of Commons before the law was passed that its intention to protect a limited allowance "is a consequence of the disadvantages under which the British Distiller labored" (Hansard's Parliamentary Debates, 5th Series, Volume 128, page 1735-7).

These allowances clearly are not known or given to that extent as object. Wharton's Law Section, 11th edition, states that "Distillation here has entirely abolished in England."

**These Allowances are Not Given Paid on the Rectification of British Spirits. They are Also Paid When Certain British Spirits are Made Domestic Consumption. Neither is it True That All British Spirits Were Imported But the Allowances; Only Those Which are Withdrawn as a Certain Specified Way Out of.**

Now does the passage of the original Act of 1888, thus far have a progressive purpose manifest in making the matter one to such spirit as go into domestic public consumption.

All spirits not so destined, whether shipped abroad or used at home, escape the tax and, in harmony with the policy of the law, all such spirits not only escape the tax but get the allowance, thus demonstrating that the allowance is not in the nature of a bounty on exportation, but is solely a compensation for extra costs of manufacture which the distiller has to incur by reason of a complicated tax machinery designed to affect only such British spirits as are potably consumed at home. Allowances are paid :

(a) When compounded spirits are "used in a customs warehouse for fortifying wines or for any other purpose to which foreign or colonial spirits may be applied under the laws or regulations of the customs" (See Section 12 of Chapter 98 of 28 and 29 Vict., 1865).

(b) When British spirits are used in the United Kingdom for industrial purposes (See Section 8 of the Finance Act, 1902, and Section 1 of the Revenue Act, 1906).

(c) When British spirits are used at universities and colleges. The statutes just cited have been held to authorize allowances in the case of such spirits.

(d) When British spirits are used as naval or ships stores.

The Board seems to be of the opinion that a "very small proportion" of British spirits not exported receives the allowance, the nature of which is here in controversy. Obviously, the quantity of spirits used in a country like Great Britain for industrial purposes must be something more than "a very small proportion" of the whole domestic consumption. A very substantial proportion of the spirits which go into home consumption not only escape the excise tax altogether, but also get the allowance.

*Not all British spirits when exported get the allowance.* The following different kinds of warehouses are defined in Section 3 of the Spirits Act of 1880 :

" 'Distiller's warehouse' means an approved warehouse on the premises of a distiller ;

“ ‘Excise warehouse’ means a warehouse approved or provided by the Commissioners as a general warehouse for the deposit of spirits ;

“ ‘Customs warehouse’ means a warehouse approved or provided by the Commissioners of Customs for the deposit of spirits.”

Spirits Act, 1880, Sec. III.

See, also, in this connection Sections 49, 50 and 54, Spirits Act of 1880. In addition to this, by Section 13 of the same Act a distiller's Spirit Store, is made mandatory :

“ 13. (1) Every distiller must, to the satisfaction of the Commissioners, provide a spirit store and cause it to be properly secured.

“ (2) The spirit store must be kept locked by the officer in charge of the distillery at all times except when he is in attendance.”

We have, therefore, (1) A distiller's warehouse ; (2) an excise general warehouse ; (3) a customs or crown excise warehouse ; (4) a distiller's spirit store. It is well known that spirits may be exported from a distiller's warehouse or from a spirit store. It is expressly provided that they may be exported from a distiller's warehouse (See Section 81, Spirits Act, 1880). But the allowances are only paid when the spirits are exported from an *excise or customs warehouse* (See Section 3, Act of 1885). Manifestly, the mere act of exportation does not entitle the distiller or shipper to the allowance. He must route his spirits through one of two prescribed warehouses if he desires to obtain it. The allowance, therefore, may or may not be extended to spirits when exported.

### **The Legal Nature of a Bounty or Grant Within the Meaning and Scope of the Tariff Law.**

A little reflection will show that the phrase “bounty or grant” as used in section 4, paragraph E of the present tariff law is of limited scope and application. The phrase certainly

was not used in its most comprehensive sense. A protective tariff, for example, may confer an indirect bounty upon its beneficiaries, and yet nobody would pretend that *legally* a protective duty fell within the bounties or grants penalized by Congress.

Section 4, Paragraph O, of the Tariff Act of 1913, provides :

“ That upon the exportation of articles manufactured or produced in the United States by the use of imported merchandise or materials upon which customs duties have been paid, the full amount of such duties paid upon the quantity of materials used in the manufacture or production of the exported product shall be refunded as drawback, less one per centum of such duties.”

This is known as the drawback section of the law and the Treasury decisions every week are filled with the granting of *allowances* on account of drawback. The original drawback provision is found in Section 3 of the first tariff act of July 4, 1789 (1st U. S. Stat., 27). The first distinctive internal revenue act passed by Congress on March 3, 1791 (1st U. S. Stat., 210), contained this provision.

#### “ Allowance to Exporters.

And for the encouragement of the export trade of the United States.”

“ SEC. 51. Be it further enacted, That if any of the said spirits (whereupon any of the duties imposed by this act shall have been paid or secured to be paid) shall, after the last day of June next, be exported from the United States to any foreign port or place, there shall be an allowance to the exporter or exporters thereof, by way of drawback, equal to the duties thereupon, according to the rates in each case by this act imposed, deducting therefrom half a cent per gallon, and adding to the *allowance* upon spirits distilled within the United States, from *molasses*, which shall be

so exported, three cents per gallon, as an equivalent for the duty laid upon molasses by the said act, making further provision for the payment of the debts of the United States: Provided always, That the said allowance shall not be made, unless the said exporter or exporters shall observe the regulations hereinafter prescribed: And provided further, That nothing herein contained shall be construed to alter the provisions in the said former act, concerning drawbacks or allowances, in nature thereof, upon spirits imported prior to the first day of July next."

A definition which distinguishes between a drawback and a bounty is cited in part by Mr. Chief Justice FULLER in the *Passavant* case, 169 U. S., page 23.

"*Drawback*, a term used in commerce to signify the remitting or paying back upon the exportation of a commodity of the duties previously paid on it.

"A drawback is a device resorted to for enabling a commodity affected by taxes to be exported and sold in the foreign market on the same terms as if it had not been taxed at all. It differs in this from a bounty, that the latter enables a commodity to be sold for *less* than its natural cost, whereas a drawback enables it to be sold exactly at its natural cost. Were it not for the system of drawbacks it would be impossible, unless when a country enjoyed some very peculiar facilities of production, to export any commodity that was more heavily taxed at home than abroad. But the drawback obviates this difficulty, and enables merchants to export commodities loaded at home with heavy duties, and to sell them in the foreign markets on the same terms as those fetched from countries where they are not taxed."

Wharton's Law Lexicon, 11th Ed.

Other authorities recognize the same distinction.

"Ency. Brit., 11th Ed.:

"\* \* \* The object of a drawback is to enable commodities which are subject to taxation to be ex-

ported and sold in a foreign country on the same terms as goods from countries where they are untaxed. *It differs from a bounty in that the latter enables commodities to be sold abroad at less than their cost price ;*

\* \* \*

" Bouvier, Ed. 1914, 3rd Rev. :

" An allowance made by the government to merchants on the *re-exportation* of certain imported goods liable to duty which in some cases consists of the whole, in others of a part, of the duties which had been paid on importation. *Goods can thus be sold in a foreign market at their natural cost in the home market."*

" Black's Law Dict., Ed. 1891 (Referring to drawback) :

" *It differs from a bounty in this, that the latter enables a commodity to be sold for less than its natural cost, whereas a drawback enables it to be sold exactly at its natural cost."*

If it be proper to free goods from every form of excise tax so that they may enter the foreign market just as if no excise tax had been imposed at all, without incurring the penalty of our bounty statutes, then manifestly we have no concern with the amount of the excise tax, or what constitutes it. All this may very well vary in different countries according to the peculiar conditions and necessities of each country. Our inquiry is : Does the thing complained of, called in this instance an *allowance*, do anything more than put the product affected in the world's market free of all excise burden ?

In the case of *United States vs. Hill Bros.*, 107 Fed. Rep., 107, cited in the opinion below, the Circuit Court of Appeals did not hold that the mere remission of the excise tax by Holland constituted a bounty, but that an actual bounty on production paid by the Netherlands Government, which under the operation of its laws the producer retained upon exportation, did amount to a bounty and to this extent *only* was a countervailing duty imposed. A clear statement of what the



facts were is found in the Circuit Court decision (99 Fed. Rep., 425).

In *Downs vs. United States*, 187 U. S., 496 (the Russian Sugar Bounty case), also cited in the opinion below, that this Court did not hold that the remission of an excise tax on exported sugar constituted a bounty. Although an excise tax, imposed upon the production of Russian sugar, had been remitted in that case, the amount of this excise tax was not added as a countervailing duty and the Government did not contend that it constituted a bounty. Neither did this Court so hold. The case is somewhat complicated and requires careful study. It appears that the Russian Government annually determined the total quantity of domestic sugar needed for home consumption and controlled both the production and the price. A certain normal and fixed amount of production was allotted to each factory, called free sugar. The excessive production over the amount fixed for home consumption was proportioned or distributed among the factories, and was identified as some specified variety of reserve or surplus sugar. Sugar from these reserves could only find its way into the home market under ordinary conditions, except on the payment of a double excise tax which was practically prohibitive. The effect was to encourage exportation of all reserve sugar. Upon exportation all excise taxes were remitted. Under the operation of a complicated system, certain assignment or transfer certificates were issued which enabled "free sugar" to be exported and an equivalent amount of "surplus sugar" to be substituted for it. The Court said, page 512 :

"It is practically admitted in this case that a bounty equal to the value of these certificates is paid by the Russian Government, and the main argument of the petitioner is addressed to the proposition that this bounty is paid not upon exportation but upon production."

It was the value of these certificates and not the remission of the excise which was held to constitute a bounty.

The Board concedes that " the method by which the Russian domestic tax was levied and collected *differed materially* from that of the British tax here under consideration " (Rec., 25).

An admirable summary of this case will be found in the Treasury Memorandum of 1911 hereinbefore referred to. We print it in full (Rec., 62) :

" In determining the question whether or not a countervailing duty shall be assessed upon spirits manufactured in Great Britain and imported from there to this country, the principal facts to be taken into consideration are :

" First, the fact that Great Britain has a fiscal policy not only of free trade, but also of a lack of artificial stimulus to trade such as is produced by bounties.

" Second, that the allowance of 3d. a gallon authorized by Section 3 of the Act of 48 and 49 Victoria, chapter 51, is an allowance made, as expressly stated in the preceding similar act (Section 4 of the Act of 23 and 24 Victoria, page 29, ' In consideration of the loss and hindrance caused by the excise regulations in the distillation and rectification of spirits in the United Kingdom.'

" Third, That from the evidence produced in the form of sworn statements of distillers and rectifiers and other evidence produced by the British Government, it appears that the allowance is not in excess of the actual loss and hindrance caused by the excise regulations.

" FOURTH. The fact that there is a greater amount of duty assessed per gallon upon imported spirits into Great Britain than there is assessed as excise upon domestic manufactured spirits in Great Britain, thus clearly indicating that the domestic distiller or rectifier is protected against competition at home ; and not merely protected by the allowance in question against competition in his export trade.

" FIFTH. The fact that the British Revenue Act of August 6, 1906, Part 1, Section 1, provides that

" ' Where any spirits are used by an authorized methylator for making industrial methylated spirits, or are received by any person for use in any art or manufacture under Section 8 of Finance Act of 1902, a like allowance shall be paid to the authorized methylator, or person by whom the spirits are received, as the case may be, in respect to those spirits as is payable on exportation of plain British spirits.'

" The effect of this act is clearly to indicate that the allowance is a *bona fide* allowance as stated in the act of 1860 and is not in any sense an export bounty.

" SIXTH. The fact that this allowance has been made since 1860 without having been acted upon by this Department at any time prior to the present investigation.

" In view of these considerations the Department has accepted the view that the allowance in question is not a bounty or grant within the meaning of Section 6 of the Tariff Act of August 5, 1909, and consequently that no countervailing duty shall be assessed upon importations of British spirits."

It is manifest—as a glance through the record will make fully apparent—that questions here in issue involve the international relations of the United States. The importance of the issue and the expediency of its review by this Court is attested by the certificate of the Attorney-General hereinbefore mentioned.

It is respectfully submitted that writs of *certiorari* should issue as prayed.

ALBERT H. WASHBURN,  
Attorney for G. S. Nicholas & Co. *et al.*  
W. P. PREBLE,  
Attorney for Alex. D. Shaw & Co. *et al.*

DEC 2 1918

JAMES D. MAHER,  
CLERK.

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# Supreme Court of the United States,

OCTOBER TERM, 1918.

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No. 62.

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G. S. NICHOLAS & CO., ET AL.,

*Petitioners,*

*vs.*

THE UNITED STATES.

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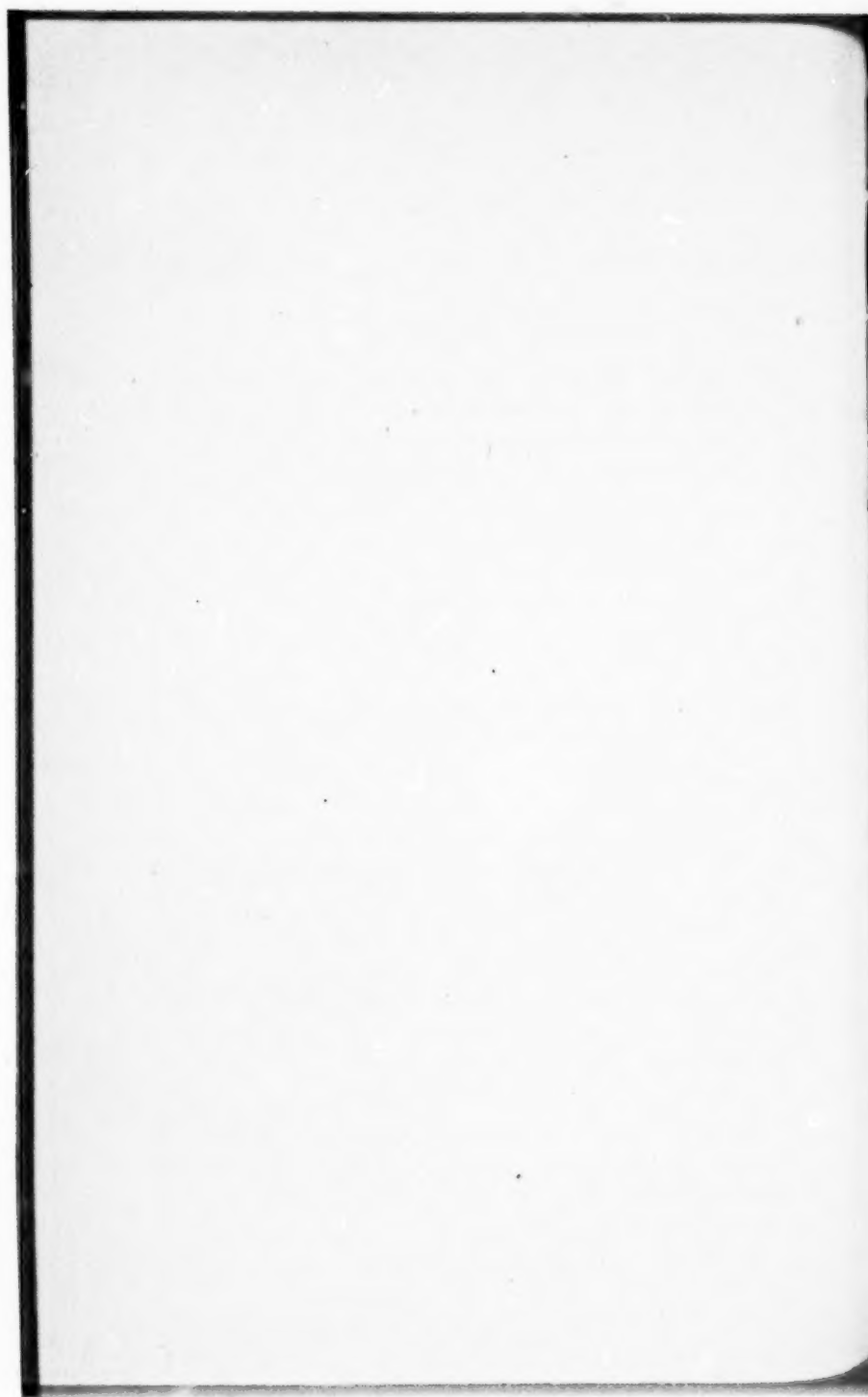
## BRIEF FOR PETITIONERS.

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ALBERT H. WASHBURN,

*Attorney and Counsel for Petitioners.*



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**In the Supreme Court of the United States.**

OCTOBER TERM, 1918.

G. S. NICHOLAS & Co., ET AL.,  
Petitioners,

VS.

THE UNITED STATES.

No. 62.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
CUSTOMS APPEALS.

**BRIEF FOR THE PETITIONERS.**

**Statement of the Case.**

This case is here on *certiorari* to a judgment of the United States Court of Customs Appeals rendered on May 12, 1916 (*Nicholas & Co., et al., vs. U. S.*, 7 Ct. Cust. Appls., 97).

The petition was filed under the Act of August 22, 1914 (38 U. S. Stat., 703), amending Section 195, Act of March 3, 1911 (36 U. S. Stat., 1087). Pursuant to said Act of 1914 the Attorney General (R., 53) on January 22, 1916, filed this certificate :

“ In pursuance of the Act entitled ‘ An Act to amend section 195 of the Act entitled ‘ An Act to codify, revive

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(The references to the Record in this brief are to pages.)

and amend the laws relating to the judiciary, approved March 3, 1911', approved August 22, 1914, I, T. W. Gregory, Attorney General of the United States, do certify that the case now pending and undecided in the Court of Customs Appeals, entitled 'No. 1594, G. S. Nicholas & Company, *et al.*, v. The United States,' is of such importance as to render expedient its review by the Supreme Court.

"Given under my hand this 22nd day of January, 1916.

T. W. GREGORY,  
Attorney General."

The British government has an excise system peculiar to itself with respect to spirits. An excise or internal revenue tax is not imposed upon spirits as such, *but only upon potable spirits when entering into domestic consumption*. The government officially recognizes that the special precautions taken by it to prevent such spirits escaping the duty results in the imposition upon the manufacturer of statutory restrictions in connection with his plant and method of manufacture which considerably enhance his natural costs of production (Exhibit 6, Annex A, R., 28).

To compensate the manufacturer, at least, in part for these extra expenses, which are no part of the normal cost of manufacture, and which the government for its own ends requires him to incur, the British government has for over half a century made an allowance under certain contingencies of so much per proof gallon upon plain and compounded spirits. At the present time these allowances amount to 3d. per gallon upon plain and 5d. per gallon upon compounded spirits. They are not alone made, as will hereafter appear, when spirits are destined for exportation; they are not limited to exported spirits, but they may or may not include such spirits.

The question presented for determination is: Does the British government pay or bestow directly or indirectly any

bounty or grant upon the exportation of spirits within the meaning of Section 4, Paragraph E, Tariff Act of October 3, 1913 (38 U. S. Stat., 114). Paragraph E provides as follows :

“ That whenever any country, dependency, colony, province, or other political subdivision of government shall pay or bestow, directly or indirectly, any bounty or grant upon the exportation of any article or merchandise from such country, dependency, colony, province, or other political subdivision of government, and such article or merchandise is dutiable under the provisions of this Act, then upon the importation of any such article or merchandise into the United States, whether the same shall be imported directly from the country of production or otherwise, and whether such article or merchandise is imported in the same condition as when exported from the country of production or has been changed in condition by re-manufacture or otherwise, there shall be levied and paid, in all such cases, in addition to the duties otherwise imposed by this Act, an additional duty equal to the net amount of such bounty or grant, however the same be paid or bestowed. The net amount of all such bounties or grants shall be from time to time ascertained, determined, and declared by the Secretary of the Treasury, who shall make all needful regulations for the identification of such articles and merchandise and for the assessment and collection of such additional duties.”

The applicable laws of Great Britain are :

- (a) August 28, 1860 (23 and 24 Vict. Cap. 129);
- (b) Section 12 of Chapter 98 of 28 and 29 Vict. 1865 ;
- (c) August 26, 1880 (43 and 44 Vict.), usually cited as the “ Spirits Act of 1880 ” ;
- (d) Sections 16 and 17 of 44 and 45 Vict. Cap. 12, 1881 ;
- (e) August 6, 1885 (48 and 49 Vict. Cap. 51) ;

- (f) August 26, 1889 (52 and 53 Vict. Cap. 42), usually cited as the "Revenue Act of 1889" ;
- (g) May 30, 1895 (58 Vict. Cap. 16) ;
- (h) July 22, 1902 (2d Ed. VII., Cap. 7) ;
- (i) August 4, 1906 (6th Ed. VII., Cap. 20).

Section IV. of the original Act of August 28, 1860, provided :

" In consideration of the Loss and Hindrance caused by Excise Regulations in the Distillation and Rectification of Spirits in the United Kingdom, there shall be paid to any Distiller or proprietor of such Spirits on the Exportation thereof from a Duty-free Warehouse, or on depositing the same in a Customs Warehouse, on or after the Fifth Day of *March*, One thousand eight Hundred and sixty, the Allowance of Twopence *per* Gallon computed at Hydrometer Proof, and to any license Rectifier who on or after the said last-mentioned Day has or shall have deposited in a Customs Warehouse Spirits distilled and rectified in the United Kingdom the following Allowances : (that is to say) on rectified spirits of the Nature of *British* Compounds not exceeding Eleven Degrees over Proof as ascertained by *Syke's* Hydrometer an allowance of Three pence per Gallon, and on Spirits of the Nature of Spirits of Wine an Allowance of Twopence per Gallon, such Gallons being computed respectively at Hydrometer Proof " (23, 24 Vict. Cap., 129).

Mr. Gladstone announced in the House of Commons before this law was passed that he intended to propose a limited allowance " in consequence of the disadvantage under which the British distiller labored " (Hansard's Parliamentary Debates, 3rd Series, Volume 106, pages 1705-7).

By the Act of August 6, 1885, the allowance was fixed at 2d. on plain spirits and 4d. on compounded spirits. Section 3 provided :

" 3.—(1) Where any spirits distilled and rectified in the United Kingdom are exported from an Excise or

Customs warehouse, or are used in any such warehouse for fortifying wines, or for any other purpose to which foreign spirits may be applied, there shall be paid in respect of every gallon of such spirits, computed at hydrometer proof, the following allowances ; that is to say :—

“ In respect of plain British spirits, and spirits of the nature of spirits of wine, an allowance of two-pence, and

“ In respect of British compounded spirits, and allowance of fourpence.”

The existing allowance of three pence on plain spirits and five pence on compounded spirits is made under Section 5 of the Act of July 22, 1902 (2d Ed. VII.). The collector took an additional or countervailing duty of three pence per British proof gallon on plain spirits and five pence on the compounded spirits upon the theory that the existing allowance under the Act of 1902 constitutes a bounty or grant within the meaning of Section 4, Paragraph E, Tariff Act of October 3, 1913 (R., 9). It appears from a statement made in 1911 by the British board of customs and excise that the rates of allowance fixed in 1902 were then in force (Exhibit 6, Annex D, R., 35). It further appears from Exhibit 8 (R., 43) that the British government certifies that there has been no change whatever since 1911 either in the amount or nature of the allowances made. See also statement of the United States consul at Edinburgh (Exhibit 7, R., 40).

The case was submitted to the board of United States general appraisers upon a stipulation (R., 14) consisting mainly of British laws and regulations, diplomatic communications containing official statements of the British contention, affidavits of British distillers, and despatches of the United States consul at Edinburgh.

The board overruled the protests of the importers and affirmed the action of the collector, T. D. 35595, G. A. 7758 (R., 16).



The court of customs appeals affirmed the decision of the board (R., 55).

The definition and significance attached to terms which will frequently recur in this brief will be found by referring to page 186 of Harper's Manual, 1914, one of the exhibits in this case (R., 15). Most of these definitions are taken from the "Spirits Act of 1880," 43rd and 44th Vict., Chap. 24, as appears from the decision of the court below (R., 57) :

*" Allowance.*—A payment granted for British spirits on being deposited in warehouse, used in warehouse, or exported, to compensate the distiller and rectifier for costs due to Excise Restrictions.

*" Spirits.*—All spirits, whether British or foreign.

*" British Spirits.*—Spirits liable to a duty of Excise.

*" Plain Spirits.*—Such as are in their original state, having had no artificial flavour communicated to them.

*" Compounded Spirits.*—Spirits prepared from duty-paid spirits by a rectifier or compounder, by re-distilling or adding any ingredient or flavouring to them."

## ARGUMENT.

**I. The construction contended for by the petitioners was followed in customs practice for many years, and the re-enactment by Congress without change of a statute, the long continued executive construction of which was expressly confirmed in 1911 after a prolonged investigation in a published decision by the department charged with the administration of the law, must be deemed an adoption by Congress of such construction.**

This doctrine has been repeatedly invoked and approved by this Court.

*Stuart vs. Laird*, 1st Cranch, 299, 309.

*Robertson vs. Downing*, 127 U. S., 607, 613.

*United States vs. Fulk & Bro.*, 204 U. S., 143.

*Copper Queen Consolidated Mining Co. vs. Arizona Board*, 206 U. S., 474, 479.

*United States vs. Cerecedo Hermanos y Compania*, 209 U. S., 337.

*United States vs. Midwest Oil Co.*, 236 U. S., 459, 469, 472.

*Louisiana vs. Jack*, 244 U. S., 397.

In *United States vs. Cerecedo Hermanos y Compania*, *supra*, the only question discussed in the opinion is the one of departmental practice, and it expressly appears that Mr. Justice WHITE and Mr. Justice PECKHAM concurred "solely because of the prior administrative construction."

In *United States vs. Midwest Oil Co.*, *supra*, the question was as to the right of the President to withdraw public lands from private acquisition without special authorization by Congress after Congress had opened them to occupation. The Court said :

"We need not consider whether as an original question the President could have withdrawn from

private acquisition what Congress had made free and open to occupation and purchase. The case can be determined on other grounds and in the light of the *legal consequences flowing from a long continued practice* to make orders like the one here involved."

*U. S. vs. Midwest Oil Co.*, 236 U. S., 469.

\* \* \* \* \*

"It may be argued that while these facts and rulings prove a usage, they do not establish its validity, but government is a practical affair, intended for practical men. Both officers, lawmakers and citizens naturally adjust themselves to any long continued action of the executive department—*on the presumption that unauthorized acts would not have been allowed to be so often repeated as to crystallize into a regular practice.* That presumption is not reasoning in a circle, but the basis of a wise and quieting rule that in determining the meaning of a statute or the existence of a power, *weight shall be given to the usage itself—even when the validity of the practice is the subject of investigation.*"

"This principle, recognized in every jurisdiction, was first applied by this court in the often cited case of *Stuart vs. Laird*, 1 Cranch, 299, 309."

*Ibid*, 472. (Italics ours.)

In *Brennan vs. United States* (C. C. A., 1st Circuit), 136 Fed. Rep., 743, the rule of long continued executive practice was held to be of the highest authority and *to master all others*, the court saying in the course of its opinion:

"Wherever, in the history of customs laws, it is found that a certain expression has received, in effect, a statutory construction, or a long and uniform use by Congress or by the departments, that construction is controlling, unless some other is necessary."

In the instant case the British allowances here construed to be a bounty or grant date from 1860. As the opinion below points out (R., 69), Section 4, Paragraph E, Tariff Act of 1913

(38 Stat., 114) is a prototype of Section 5 of the Tariff Act of 1897 (30 Stat., 151), and was substantially re-enacted in Section 6 of the Act of 1909 (36 Stat., 11), and again in 1913 (38 Stat., 114). From 1897, then, there has been no attempt in actual practice *except in the instant case (Robertson vs. Downing, 127 U. S., 613)* to challenge this long continued departmental construction. The present case arises out of Treasury Decision 34466 of May 25, 1914. From 1897 down to 1914 then there was an uninterrupted departmental construction which was consistently adhered to in actual practice. It is true that this assertion does not agree with the position taken in the opinion below, which is evidently based upon a misconception. The court below (R., 69) reasons that "the departmental action negatives rather than supports the contention of appellants." It is said that from 1897 until April 18, 1911 (T. D. 31490) the section of the law here involved was construed as contended for by the petitioners. T. D. 31490 of April 18, 1911, sustained the contention of petitioners and the reference here is doubtless to T. D. 31229 of January 21, 1911, which did hold the British allowances to constitute a bounty under Section 6 of the Tariff Act of 1909. It was this ruling which was revoked *without having been actually followed in customs practice* by T. D. 31490 of April 18, 1911. The court then proceeds to point out that on May 25, 1914 (T. D. 34466), the department returned to its original ruling of January 21, 1911, and that "this *alternating practice* of approximately three years would not bring appellants within the rule of long continued and uniform departmental practice" (R., 69).

The facts are, as the record satisfactorily establishes, that T. D. 31229 of January 21, 1911, never became operative. By its terms it did not take effect until thirty days after date. Before the thirty days expired, to wit, on February 3, 1911, Ambassador Bryce in a memorandum to Secretary of State Knox urged very strongly, to use his

own language, that "the enforcement of the order should either be postponed indefinitely or to such a date as would permit" the production of satisfactory evidence "showing that this allowance does no more than cover the losses imposed on the industry by fiscal regulations imposed for revenue raising purposes (and) that such evidence be accepted as proof that these allowances do not come within the meaning of the term bounty in the proper sense of the word" (Ex. 5, R., 23, 25). It appears from the British Embassy despatch of March 17, 1911, to the Department of State that a postponement of one month was granted "which has been sufficient to permit the Embassy to obtain the required proof." Ambassador Bryce adds:

"It may not, however, be enough to allow of the full and careful reconsideration of the question which its intrinsic international importance and its commercial equities require. Unless, therefore, the new data now supplied is found to be so obviously conclusive that a decision can be come to before the date fixed for imposition of the countervailing duty on March 22d, I would strongly represent the propriety of a further postponement."

Ex. 6, R., 27.

The United States Treasury memorandum reviewing the evidence submitted by the British government and reaching the conclusion, thus upholding the contention of that government, "that the allowance is a bona fide allowance as stated in the act of 1860, and is not in any sense an export bounty" is dated April 17, 1911 (R., 45). The formal Treasury decision (T. D. 31490) is dated the following day, April 18th. It recites:

"Upon a further consideration of the laws of the United Kingdom of Great Britain and Ireland relating to the allowance granted upon exported British spirits, and in view of additional laws and facts in relation thereto submitted by officers of the said Government,

the department has reached the conclusion that the said allowance is not a bounty or grant within the meaning of section 6 of the tariff act of August 5, 1909. Consequently no countervailing duty will be assessed upon British spirits imported into the United States. T. D. 31229 is hereby revoked."

It is manifest that the Treasury decision of January 21, 1911, was held in abeyance to enable the ruling to be reconsidered and that it was revoked on April 18, 1911, thus leaving the actual departmental practice undisturbed until the promulgation of T. D. 34466 of May 25, 1914, which became effective thirty days thereafter.

Even the Treasury ruling of May 25, 1914 lacks the support of the chief law officer of the Government, for it is therein stated that "the Attorney General has stated that the question of whether the said expert allowance are bounties within the meaning of Paragraph E of Section 4 of the Tariff Act of October 3, 1913, is one better fitted for judicial determination than for an expression of his opinion." Plainly, therefore, the court below was in error in supposing that there had been an "alternating practice of approximately three years" (R., 69). On the contrary it is clear that the departmental practice was "uniform" and that it was "long continued" (1897 to 1914).

The reenactment by Congress in 1913 without change of a statute which had previously received the long continued executive construction referred to in the United States Treasury memorandum of April 17, 1911, and confirmed on the following day in T. D. 31490, of which the law making body must be presumed to have taken due notice, is an adoption by Congress of such construction (*United States vs. Cerecedo Hermanos y Compania, supra*).

The court below observes :

"That this Government would be bound by the existence of a statute of Great Britain of which it pre-

sumptively has taken and can take no notice even in its courts of record unless therein proven, is, in the opinion of this court without any force " (R., 69).

The meaning of this is not quite clear. By the very terms of Section 4, Paragraph E of the Tariff Act of 1913 the duty is cast upon the Secretary of the Treasury of ascertaining and declaring the net amounts of all bounties or grants paid or bestowed by any foreign country or other political subdivision of government, and he cannot perform this duty without taking notice of foreign statutes, just as he did in the instant case when he issued the regulations attached to T. D. 34466.

The prototype of Section 4, Paragraph E, Tariff Act of 1913, is found in Section 5, Tariff Act of July 24, 1897 (30 U. S. Stat., 151). Following the enactment of this law, prompt steps were taken to make it effective, as appears from Volume 48 of Consular Reports, H. R. 55th Congress, 2nd Session, Document No. 565. We quote the following, found at page 584 :

" In view of the provision in the United States Tariff Act of July 24, 1897, for the assessment of additional duty upon imported merchandise which had received a bounty from the country of production a Department instruction was sent to consular and diplomatic offices in various foreign countries, requesting them to furnish information as to bounties granted by the several governments. The reports received (copies of which were sent to the Treasury Department) have been summarized as follows " :

Thereafter follow reports from twenty-eight countries, dependencies or colonies.

The action of Congress with respect to bounty legislation in 1897 was somewhat anticipated, as is shown by the following explanatory note taken from H. R. 55th Congress, 3rd Session, Document No. 285 :

" The clause in the general deficiency bill of July 19, 1897, authorized the Department of State to print a



compilation of the tariffs of foreign countries and on July 22, 1897, the circular sent by the Acting Secretary of State, Mr. Adee, was mailed to the diplomatic representatives of the United States in foreign countries and consular officers resident in countries where there were no diplomatic representatives, instructing them to obtain with the least possible delay copies of the tariffs of the several countries, customs regulations and *bounty legislation relating to the export of domestic products* and transmit them to the Department as printed in the original official publications with accurate translations where the matter was printed in foreign languages."

During the succeeding twelve months subsequent to July 24, 1897, to go no further, the Treasury Department issued many instructions relating to bounties. See T. D. 18345 ; T. D. 18397 ; T. D. 18504 ; T. D. 18660 ; T. D. 18679 ; T. D. 18784 ; T. D. 19045 ; T. D. 19071 ; T. D. 19318 ; T. D. 19361 ; T. D. 19397 ; T. D. 19425. These instructions for the most part related to countervailing duties on imported sugars from different countries in Europe and South America, but not exclusively. Fish from France and from St. Pierre Miquelon, a French possession, were also covered.

Thereafter from time to time the Consular Reports disclose the activity of our consular officers abroad in reporting the payment of bounties.

See :

Volume 66, No. 248, page 163, iron and steel bounties in Canada ; page 586 on pig lead (56th Congress, 2nd Session).

Volume 69, No. 263, bounties on lead in British Columbia (57th Congress, 1st Session)-

Volume 70, Nos. 264, 267, page 234, bounties on German metal exports ; page 538, bounty on sugar in France (57th Congress, 1st Session).

Volume 73, Nos. 276, 279, page 278, Canadian bounties on iron and steel (58th Congress, 2nd Session).

A review of the history of tariff legislation will satisfy

any student that in enacting the bounty provisions Congress aimed chiefly to reach bounty fed imported sugars. As observed in a memorandum of the British Embassy dated February 7, 1911 (R., 25), "the leading cases illustrative of the application of the section of United States tariff imposing countervailing duties are those of Dutch and Russian sugars—none of the very few other cases in which the section has been applied—such as fish from St. Pierre, Chilean wine, etc.—throw any additional light on its interpretation."

A perusal of the Consular Reports and Treasury Decisions above recited will disclose that the Treasury Department was kept informed by the United States representatives abroad of the existence of foreign statutes which had any bearing upon the bounty provisions of our tariff laws, and sugar was not the *only* commodity affected.

Indeed this record bristles with evidence that the instant case may be traced directly to our foreign consuls abroad. T. D. 31229 of January 21, 1911, subsequently revoked as we have seen by T. D. 31490 of April 18, 1911, was no doubt due to the despatches of March 23, 1910, and June 7, 1910, of our consul at Edinburgh; see also despatch of April 28, 1911 (Ex. 7, R., 40 and 41). On August 5, 1913, the consul returns to the charge, saying that:

"this office has no information in regard to the grounds upon which the Treasury Decision of January 21, 1911, was reversed, but I deem it my duty to make further representations concerning this allowance on exported spirits." (R., 42).

The proof is ample that T. D. 34466 of May 25, 1914, is due to this revival of the matter by the Edinburgh consul (R., 44 and 50).

Furthermore, it appears from the consul's letter of March 23, 1910 (R., 40), that as early as December, 1904, anyway, the attention of the United States government was drawn to this matter, so any presumption that this government had no knowledge of the existence of a statute of Great Britain re-

lating to allowances on British spirits affirmatively disappears from this case with the close of the year 1904.

There is much in the facts in this case which suggests a striking parallel to the case of the *Copper Queen Consolidated Mining Company vs. Arizona Board*, 206 U. S., 474. There the question in issue had to do with the powers of a board of equalization based upon a statute of Arizona said to have been taken almost verbatim from one of Colorado, which had been construed by the supreme court of that state in accordance with one of the contentions of the petitioner before it was adopted by Arizona. Nevertheless after calling attention to these facts this Court said :

“ On the other hand, while this court cannot refuse to exercise its own judgment, it naturally will lean toward the interpretation of a local statute adopted by the local court (*Sweeney v. Lomme*, 22 Wall., 208; *Northern Pacific R. R. Co. v. Hambly*, 154 U. S., 349, 361; *Fox v. Haarstick*, 156 U. S., 674, 679). And again, when for a considerable time a statute notoriously has received a construction in practice from those whose duty it is to carry it out, and afterwards is re-enacted in the same words, it may be presumed that the construction is satisfactory to the legislature, unless plainly erroneous, since otherwise naturally the words would have been changed (*New York, New Haven & Hartford R. R. Co. v. Interstate Commerce Commission*, 200 U. S., 361, 401, 402). The statute of Arizona was re-enacted in 1901 and was said by the Supreme Court to have been construed by the Board against the petitioner's contention ever since the Board was created, eighteen years before. Even apart from the re-enactment a certain weight attaches to this fact. *United States vs. Finnell*, 185 U. S., 236, 243, 244. *United States vs. Sweet*, 189 U. S., 471. The presumption that the codifiers of 1901 knew and approved the practice of the Board certainly is as strong as the presumption that the original enactors of the statute knew a single decision in another State; and it is more important since it refers to a later time ” (206 U. S., 479).

The board of general appraisers dismisses the argument based upon departmental construction with the contention that it conflicts with judicial interpretation in the Russian sugar bounty case, to which reference will hereafter be made, though it concedes that in one respect at least the case at bar differs radically from that case (R., 21). Moreover, the question of long continued executive practice based upon departmental construction did not arise in the Russian sugar bounty case.

To sum up this branch of the case in a few words, the allowance on British spirits dates from 1860. The *general* bounty provision was first inserted in the Tariff Act of 1897. From that date until 1914, for a period of 17 years, the departmental practice was consistent in viewing this allowance, not as a bounty, or grant within the meaning of our tariff laws, though on two occasions as the record shows, to wit, in 1904 and again in 1910, attention was officially drawn to the statutes of Great Britain bearing upon the subject. Meanwhile two tariff laws were reenacted, the one in 1909 following the consular despatch of 1904, and the other one in 1913 following the consular despatches in 1910, and the departmental ruling of April 18, 1911. A stronger case for the application of the doctrine flowing from a long-continued and uniform practice, and legislative reenactment in the face of that practice, could hardly be found.

**II. A countervailing duty is assessed upon British spirits upon the theory that Great Britain pays or bestows a bounty or grant upon their exportation, whereas in fact not all British spirits when exported get the allowance; only those which are warehoused in a certain specified way get it. Furthermore, the allowance is also paid when certain British spirits go into domestic consumption.**

Ever since the passage of the original law of 1860, there has been a progressive purpose manifest to confine the excise

tax to such spirits as go into domestic *potable* consumption. All spirits not so destined, whether shipped abroad or used at home, escape the tax and, in harmony with the policy of the law, all such spirits not only escape the tax but get the allowance, thus demonstrating that the allowance is not in the nature of a bounty on exportation, but is solely a compensation for extra costs of manufacture which the distiller has to incur by reason of a complicated tax machinery designed to affect only such British spirits as are potably consumed at home. Allowances are paid :

(a) When compounded spirits are "used in a customs warehouse for fortifying wines or for any other purpose to which foreign or colonial spirits may be applied under the laws or regulations of the customs" (See Section 12 of Chapter 98 of 28 and 29 Vict., 1865).

(b) When British spirits are used in the United Kingdom for industrial purposes (See Section 8 of the Finance Act, 1902, and Section 1 of the Revenue Act, 1906).

Finance Act of 1902 :

"8. (1) Where, in the case of any art or manufacture carried on by any person in which the use of spirits is required, it shall be proved to the satisfaction of the Commissioners of Inland Revenue that the use of methylated spirits is unsuitable or detrimental, they may, if they think fit, authorize that person to receive spirits without payment of duty for use in the art or manufacture upon giving security to their satisfaction that he will use the spirits in the art or manufacture, and for no other purpose, and the spirits so used shall be exempt from duty :

"Provided that foreign spirits may not be so received or used until the difference between the duty of customs chargeable thereon and the duty of excise chargeable on British spirits has been paid."

2nd Ed., VII., Cap. 7; Exhibit 1, h., R., 14.

## Revenue Act of 1906 :

"1. (1) Where any spirits are used by an authorized methylator for making industrial methylated spirits, or are received by any person for use in any art or manufacture under section eight of the Finance Act, 1902, the like allowance shall be paid to the authorized methylator or to the person by whom the spirits are received, as the case may be, in respect of those spirits as is payable on the exportation of plain British spirits, and the Commissioners may by regulations prescribe the time and manner of the payment of the allowance and the proofs to be given that the spirits have been or are to be used as aforesaid."

6th Ed., VII., Cap. 20, Ex. 1, i., R., 14.

"'Methylate' means to mix spirits with some substance in such manner as to render the mixture unfit for use as a beverage, and 'methylated spirits' means spirits so mixed to the satisfaction of the Commissioners."

Spirits Act, 1880, Sec. 3.

(c) British spirits for use, duty free, at universities and colleges, etc. The statutes just quoted as held to authorize the payment of the allowances in the case of such spirits (See G. O. 20/06, cited in Ham's Year Book, Exhibit 2 for identification, page 165).

(d) British spirits when used as naval or ship's stores (See G. O. No. 6, 1887, cited in the Imperial Tariff, Exhibit No. 4 for identification, page 105).

It is of course not accurate to say, as the board does (R., 19) that if spirits are "sold for consumption in Great Britain, they are burdened with the excise tax." It is only when sold for *potable* consumption that they are so burdened. Indeed, the board recognizes this by saying later on (R., 21) :

"In the case at bar a part of the spirits that are not exported are also relieved from the excise tax, and

some also receive the allowance made to spirits exported. The record is not entirely clear as to what proportion this is of the whole domestic consumption of spirits of this character. It is quite apparent, however, that it is a *very small proportion*, and the fact remains, *which in our judgment is the controlling fact*, that the *very large part* of the spirits of the class here under consideration that are sold to be consumed in Great Britain has to pay the excise tax, and that that which is exported does not, and, in addition thereto, receives the allowance heretofore stated." (Italics ours).

The authority for this view is not disclosed. It carries its own refutation. Obviously, the quantity of spirits used by a country like Great Britain for what may be broadly termed industrial purposes, must be something more than "a very small proportion" of the whole domestic consumption. It must be true that a very substantial proportion of the spirits which go into home consumption not only escape the excise tax altogether, but also get the very same allowance for which we here contend.

*Not all British spirits when exported get the allowance.*  
The following different kinds of warehouses are defined in Section 3 of the Spirits Act of 1880 :

" ' Distiller's warehouse ' means an approved warehouse on the premises of a distiller.

" ' Excise warehouse ' means a warehouse approved or provided by the Commissioners as a general warehouse for the deposit of spirits.

" ' Customs warehouse ' means a warehouse approved or provided by the Commissioners of Customs for the deposit of spirits."

Spirits Act, 1880, Sec. III.

See, also, in this connection Sections 49, 50 and 54, Spirits Act of 1880. In addition to this, by Section 13 of the same Act a distiller's Spirit Store, is made mandatory :

" 13. (1) Every distiller must, to the satisfaction of the Commissioners, provide a spirit store and cause it to be properly secured.

" (2) The spirit store must be kept locked by the officer in charge of the distillery at all times except when he is in attendance."

We have, therefore, (1) a distiller's warehouse ; (2) an excise general warehouse ; (3) a customs or crown excise warehouse ; (4) a distiller's spirit store. It is obvious that spirits may be exported from a distiller's warehouse or from a spirit store. It is expressly provided that they may be exported from a distiller's warehouse (See Section 81, Spirits Act, 1880). But the allowances are only paid when the spirits are exported from an *excise or customs warehouse* (See Section 3, Act of 1885, heretofore cited). Manifestly, the mere act of exportation does not entitle the distiller or shipper to the allowance. He must route his spirits through one of two prescribed warehouses if he desires to obtain it. The allowance, therefore, may or may not be extended to spirits when exported.

### **III. These allowances are not bounties or grants in their origin and purpose.**

When the question as to whether these allowances did or did not constitute a bounty or grant was the subject of investigation by our Government in 1911, Ambassador Bryce transmitted to Secretary of State Knox a report of the British board of customs and excise in which it is stated (Exhibit 6, Annex A, R., 28) :

" These allowances have formed an essential feature of our system of taxing spirits ever since 1860, when, in



consequence of the Cobden treaty with France, the former protective duties were abolished. It is a significant fact that the adoption of the allowances as part of our fixed system, so far from being associated with any idea of a bounty, took place at the very time when free-trade principles secured the most complete acceptance in this country.

"The object of the allowances originally was, and still is, not to place the manufacturer of British spirits in a position of advantage, as compared with his foreign competitor in the foreign market, but to prevent him from being placed in a position of disadvantage in that market as a result of the expenditure which his own Government, for its own ends, forces him to incur in the process of manufacture.

"The duty on British spirits is very heavy, and involves the necessity of special precautions being taken to prevent any spirit escaping the duty. These precautions include the imposition upon the manufacturer of a number of statutory requirements and restrictions in connection with his plant and methods of manufacture, which considerably increase the cost of manufacture. The allowances on exportation are intended to be an equivalent and no more than an equivalent of this extra cost.

"This object has been kept in view in fixing the actual amount of the allowances."

In commenting on this Mr. Bryce said (Exhibit 5, R., 23) :

"So far from these allowances being intended to protect or foster a domestic industry in order to strengthen it against competition abroad they owe their origin to the adoption by Great Britain of free trade principles. The necessity of raising revenue otherwise than by import duties of a protective character made a heavy excise upon spirits indispensable and that in turn caused the establishment of a complicated structure of fiscal regulations and administrative processes for the distilling industry. An excise has the highest

cost of production in proportion to the return of any tax—and this cost of collection greatly adds to the expense of carrying on the industry. As compensation for the heavy pressure of the excise and because spirits are articles whose large consumption it is not desired to encourage, the industry is accorded in the home markets a fair chance with foreign producers by an import duty, which restores the balance as between the home and the foreign distiller and on export to foreign markets is allowed a drawback for the loss and hindrance to which the exported product has been subjected together with that for home consumption."

It is evident that Parliament from the start was not voting any bounty or allowance to the British distiller, but merely an *allowance*—to quote the language of the Act of 1860—"in consideration of the loss and hindrance caused by the excise regulations" to the distiller in the conduct of his business. What the distiller got was not a bonus but *compensation* for the extra expenses which he incurred. In a statement submitted by the board of customs and excise and transmitted by the British Ambassador to the State Department in 1911 (Exhibit 6, Annex A, R., 29) it is said :

"The allowances were originally fixed by Mr. Gladstone in 1860 after prolonged consultation between the Revenue Authorities and the traders affected. The traders were required to formulate their claims in the fullest detail, stating what restrictions in their opinion increased the cost of manufacture and the exact amount of extra cost attributable to each; every item was closely criticised by the Revenue Authorities, some being disallowed altogether, and others allowed in a whole or in part; with the result that the allowances were fixed at a figure which the Revenue authorities accepted as not exceeding the loss caused by revenue restrictions. In the period since 1860 the rates have been on more than one occasion modified as necessity arose, but the same object, as above described, has been

kept in view, and the same procedure followed in order to arrive at the exact rates to be allowed."

An official summary of what these allowances are based on will be found in the statement submitted by the British Ambassador to the State Department in 1911 (Exhibit 6, Annex D, R., 35), to wit:

" Allowance of 3d. on Plain Spirits.

This allowance is given in respect of the various restrictions imposed by the law upon distillers, of which the following are the most important:

- (1) The prohibition against brewing and distilling at the same time;
- (2) The prohibition against mixing worts while in the process of fermentation;
- (3) The compulsory stoppage of work on Sundays;
- (4) The restrictions on the manufacture of yeast.

We are satisfied that at the present time the cost thrown upon the distiller by these restrictions is not less than the 3d. allowed.

" Allowance of 5d. on Compounded Spirits.

" Rectifiers and compounders, *i. e.*, manufacturers of British compounded spirits (*e. g.*, gin, sloe gin, orange bitters, and British liquers), work under this further statutory disability that their business must be carried on apart from a distillery and the compounds must be manufactured from spirits on which the duty has been paid. This restriction increases the costs of manufacture by at least 2d. per gallon. An allowance of 5d. per gallon is therefore paid on the exportation of British compounded spirits of which 3d. is payable in respect of the restrictions at the distillery, which have enhanced the price of the spirits as purchased, and the remaining 2d. in respect of the restrictions imposed on the rectifier."

Just how these restrictions operate can be seen by reference to the sworn statements of distillers submitted by the British Ambassador in 1911, some of which statements have

been incorporated in this record. Here is a brief summary of what they establish: James Buchanan, chairman of James Buchanan & Co.; Thomas R. Dewar, Managing Director of John Dewar & Sons Company; Peter J. Mackie, Chairman of Mackie & Co., and George P. Walker, Chairman of John Walker & Sons, Ltd., all distillers of well-known brands of Scotch Whisky, united in making this statement:

"these restrictions include: *e. g.*, the condition that the mashing and distilling processes must be carried on at separate times, thereby causing one-half of the plant to remain idle, *whereas in Continental Distilleries these processes can be carried on simultaneously and continuously, even during Sundays. The result of this restriction is, by comparison, to reduce the production of the British distiller, employing similar plant, by one-half or two-thirds.*

"That the regulations governing the equipment of distilleries, warehouses and housing accommodation for revenue officers are exceedingly onerous in their requirements of capital outlay and that the drawback in question has been, and is, admittedly given as some recompense therefor."

Ex. 6, Annex E, R., 37.

Alexander John Cameron, Secretary to John Dewar & Sons, Ltd., stated that:

"the allowance made to us by the Treasury of the British Government on whisky exported to foreign countries and amounting to three pence per Imperial proof gallon as tested by Sykes' hydrometer does not adequately reimburse or cover us for the extra expense and outlay incurred by us in the manufacture of whisky by reason of the many restrictions and restraints put upon us by the British Excise Regulations such as—

(a) Separation of periods in distillation, thus involving idleness of half our plant which would be obviated did such restrictions not exist.

(b) The prohibition of Sunday work.

(c) Interest on capital thus sterilized.

(d) Various other minor restrictions which all tend to increase the cost of production."

Ex. 6, Annex E, R., 38.

John Charles Calder, Managing Director of James Calder Co., made a statement more in the way of an argument, but his opinion nevertheless carries weight. He says :

" I consider the rebate of three pence per proof gallon, allowed to us by the excise authorities in this country on the exportation of British whiskies, is not sufficient to cover the actual loss of producing the whisky on account of the excise regulations. These regulations are so many and so varied that it is impossible to enumerate them in detail, but I have repeatedly made application and discussed the matter with the excise authorities asking for an increase of this rebate as it was not sufficient, and pointing out the reasons why I consider it too small, but have never been successful in getting it increased, as our excise authorities said to me that the revenue was so much needed that there was no chance of getting anything extra, and it is proof positive that this allowance is not a bounty, but an allowance on account of the extra cost, simply and solely that it is allowed, as, otherwise, the government would never grant us this money as there is no industry to which they pay less consideration."

Ex. 6, Annex E, R., 39.

Peter Dawson, referred to as one of the largest Scottish stillers, has this to say :

" The distillers and producers of spirits in Great Britain are required by the internal revenue law to close down their business on Saturday night at twelve o'clock, thus compelling all fires to go cold and requiring the reheating of all mash, kettles, stills, etc., etc., Monday morning of every week. \* \* \*

"Separate and distinct records must be kept in particular books and in a particular manner regarding every mash and all the liquor produced therefrom subject to the inspection of the government officials at all times, and report must be made concerning the business of distilling required from time to time to the government. \* \* \*

"It is to be remembered that the requirement of the law forbidding the conduct of business from midnight on Saturday until one o'clock Monday morning applies solely to the distillation of British spirits, while all other manufacturing businesses are permitted to continue steadily from month-end to month-end, or from year's-end to year's-end, with no legal restriction whatsoever.

"It must further be noted during the period of time from Monday morning at one o'clock to Saturday night at twelve o'clock the business of distilling is conducted under the immediate eye of the excise officials, but that the hours are limited daily from nine o'clock to four o'clock, and (if) it becomes necessary to pay an extra fee for the two hours additional attendance on the part of the Government officers."

Exh. 11, R., 48, 49.

The despatch of the U. S. consul at Edinburgh, dated August 5, 1913, is doubtless, as we have already noted, responsible for the decision of the Treasury department to impose a countervailing duty in 1914 after having decided not to impose it following its thorough investigation in 1911. The argument of the consul in the despatch just mentioned runs thus (R., 42) :

"Spirits to be exported and spirits to be entered for domestic consumption are taken from *the same vat*. The contention of exporters of whisky that the allowance of three pence per proof gallon is of the nature of a 'drawback' for extra expense imposed by the excise restrictions upon that business, has no validity. The additional labor cost or other cost to *blenders and bottlers* involved in the excise restrictions is trifling, in-

asmuch as fully four-fifths of the spirits to be entered for home consumption are blended and bottled in bond by the same employees who blend and bottle spirits to be exported and under exactly the same conditions. Any increased cost on account of excise restrictions is more than counterbalanced by the saving effected by bottling, etc., in bond. In the processes of blending and bottling and of casing and barreling spirits, there is a certain amount of waste, especially due to the breaking of bottles or other containers. In bond, the loss by this waste of spirits is comparatively small, as no tax has been paid on the spirits. On every gallon wasted in bond by the bursting of bottles, etc.,—the loss is from  $2/6$  (61 cents) to 5/- (\$1.21), whereas on every gallon of tax-paid spirits wasted the loss is from  $17/3$  (\$4.19) to 19/9 (\$4.80). Obviously, it is economical to blend and bottle spirits in bond for domestic consumption as well as for export; and it is obvious also that the allowance on the exportation of spirits is purely a grant of bounty. This allowance is so regarded here by all users of neutral spirits (manufacturing chemists and others), by dealers in wines, and by dealers in whisky who are not exporters."

This statement is in the main irrelevant and misleading. The additional cost to blenders and bottlers resulting from the excise restriction is very likely trifling, as he says, but this is beside the point. Complete answer to the consul's argument is found in the despatch of the British Ambassador to the Secretary of State of date May 1, 1914 (Exhibit 9, R., 43):

"After careful consideration of this despatch His Majesty's Government feel convinced that the United States consul is under a misapprehension as to the facts of the case. He maintained that the allowance is of the nature of a grant or bounty, and not merely a drawback, because British spirits for export and for home consumption are taken from the same vat and are branded and bottled in bond; and that therefore the trifling extra cost imposed by the excise regulations is

more than counterbalanced by the saving of the amount of the tax, on such spirits as are wasted by the breaking of bottles in the process of bottling and blending in bond. This argument rests upon the erroneous assumption that the exporter received the allowance as compensation for extra expense caused to him by the excise regulations governing the *blending and bottling* operations in bonded warehouses. But these regulations have no bearing upon the question at issue. The allowance of 3d. in the case of plain spirits is granted solely on account of statutory restrictions on the actual *brewing and distilling* which increase the cost of production to the distiller; the allowance of 5d. in the case of compounded spirits is made up of 3d. payable in respect of the above mentioned restrictions at the distillery and 2d. extra on account of the further statutory disability that the work of rectifying and compounding must be carried on apart from a distillery and the compounds must be manufactured from spirits which have already paid duty. The regulations under which the subsequent operations of vatting, blending and bottling are carried in bonded warehouses are not, and never have been considered in connection with the export allowance. \* \* \*

“ With reference to the statement contained in the consul's despatch to the effect that ‘ British users of neutral spirits (manufacturing chemists and others) dealers in wines and dealers in whisky, who are not exporters regard the allowance as a bounty,’ His Majesty's Government doubt whether this view is widely prevalent. They point out, however, that these classes of traders have no interest in the matter and probably few have any knowledge of the nature and reasons of the allowance.”

To the same effect, see the statement of the Commissioners of Customs and Excise, dated 18th of April, 1914 (Exhibit 10, R., 47):

“ The view of the consul that there is no justification for the grant of allowance on the exportation of British spirits and that payment of such allowance is



‘purely a grant or bounty,’ appears to be based upon a complete misconception of the facts of the case.”

Statement is made by the chairman of the Scottish Whisky Exporters’ Association (Exhibit 11, R., 50) that the conclusions of the consul “are based on inaccurate knowledge of the true facts.” Some corroboration that the consul’s investigations, if not superficial were at least not thorough, is found in the statement in his despatch of April 28, 1910 (Exhibit 7, R., 40), that “the terms of the *original* law granting an allowance on the exportation of whiskey, etc., are found in the Customs and Inland Revenue Act of 1885.” The original law, as we have seen, goes back to 1860.

The nature of the extra charges, directly traceable to the excise regulations for which the British government seeks to remunerate the distiller when his output is not destined to be used as potable spirits in domestic consumption, is thus made plain from the foregoing analysis of the record. It is evident that from Gladstone’s time down to the present, British government officials have conducted exhaustive investigations to approximate the amount of these extra charges. It appears that the distillers have been required to formulate their claims in the fullest detail and every time has been closely criticized by the revenue authorities with the result that the allowances are fixed at a figure which these authorities accept as not exceeding the loss called by these revenue restrictions (Exhibit 6, Annex A, R., 28 ; Exhibit 6, Annex D, R., 35). It further appears that the distillers, as is shown by the statements of Nicholson, Dawson and others, have from time to time energetically represented that these allowances are inadequate (Exhibit 6, Annex E, R., 36, 38, 39 ; Exhibit 11, R., 48). It is evident finally from the record that this is virtually recognized by the British government. The British Ambassador in his statement of the British case in 1911 asserted (Exhibit 6, R., 32), that :

“the allowances do not even compensate the losses they are intended to reimburse, as is abundantly proved.”

By way of summary on this branch of the case, we quote the following :

"The internal revenue law of Great Britain, imposes a tax upon all spirits produced for potable purposes, but since all distillers produce spirits for both potable purposes and for methylating for commercial use, as well as for export, it becomes necessary that the tax should be estimated upon the entire amount of production although paid only upon the goods manufactured for domestic potable use. It thus appears that the expense incident to full obedience with the internal revenue law applied to all liquor distilled whether the same subsequently is sold for methylated commercial purpose or is exported, and as this expense is very considerable, the government has, for more than fifty years, made an allowance per gallon to the distiller upon so much of his product as is turned into methylated commercial channels, or, being potable, is exported from the country " (Dawson's statement, Exhibit 11, R., 48).

" No one has ever suggested that the blender and bottler of British spirits for export is hampered with any restrictions which do not equally apply to spirits consumed in this country. What we do say is that the whole operations of distillers in this country, whether the spirits are destined for home or export, are carried on under restrictions which are deemed necessary to protect the large revenue derived from their product. *In the case of spirits consumed in this country the extra costs entailed may be regarded as an addition to the duty which is collected in cash, and as between distillers at home no one received a preference over the other.*"

(Statement of the Scottish Whisky Exporters Association, Exhibit 11, R., 50).

These extra costs, which are incontestably proved actually to exist and which the allowonces are designed to cover, are in reality, when analyzed, in the nature of an *additional excise*

*tax* upon the distiller. With this fact established our problem is simplified. Our inquiry must now be directed to ascertain whether the act of compensating distillers for these extra costs, constitutes directly or indirectly the paying of a bounty or grant. The answer to this question involves a consideration of:

#### **IV. The Legal Nature of a Bounty or Grant within the Meaning and Scope of the existing Tariff Law.**

But little reflection is needed to demonstrate that the phrase "bounty or grant" as used in Section 4, Paragraph E of the present law is of limited scope and application. The phrase cannot be possibly used in its most comprehensive sense. There is a wide difference between an indirect bounty and indirectly paying a bounty. The statute does not provide for an indirect bounty. To illustrate, there is an age-worn controversy as to whether a protective tariff in effect operates to bestow a bounty upon the domestic manufacturer. The controversy is more or less political in character, but it would not be difficult to find considerable support in the writings of many political economists for the proposition that a protective tariff confers an indirect bounty upon its beneficiaries. Even Alexander Hamilton in his widely quoted "Report of Manufactures" communicated by him as Secretary of the Treasury to the House of Representatives on December 5, 1791, said, under the caption of "Protective Duties":

"Duties of this nature evidently amount to a virtual bounty on the domestic fabrics; since by enhancing the charges on foreign articles, they enable the national manufacturers to undersell all their foreign competitors" (Lodge's Works of Hamilton, Ed. 1885, Vol. III., p. 364).

And yet nobody would pretend that *legally* a protective duty fell within the bounties or grants penalized by Congress. Indeed, Hamilton himself had a very clear conception of the scope of the term bounty as it is ordinarily used in tariff matters in common speech, as we shall presently point out.

Section 4, Paragraph O, of the Tariff Act of 1913 (38 Stat., 114), provides :

"That upon the exportation of articles manufactured or produced in the United States by the use of imported merchandise or materials upon which customs duties have been paid, the full amount of such duties paid upon the quantity of materials used in the manufacture or production of the exported product shall be refunded as drawback, less one per centum of such duties."

This is known as the drawback section of the law and the Treasury Decisions weekly are filled with the granting of *allowances* on account of drawback. The original drawback provisions is found in Section 3 of the first tariff act of July 4, 1789 (1 U. S. Stat., 27.) The first distinctive internal revenue act passed by Congress on March 3, 1791 (1 Stat., 199), contained this provision.

#### "Allowance to Exporters.

"And for the encouragement of the export trade of the United States.

"SEC. 51. Be it further enacted, that if any of the said spirits (whereupon any of the duties imposed by this act shall have been paid or secured to be paid) shall, after the last day of June next, be exported from the United States to any foreign port or place, there shall be an allowance to the exporter or exporters thereof, by way of drawback, equal to the duties thereupon, according to the rates in each case by this act imposed, deducting therefrom half a cent per gallon, and adding to the *allowance* upon spirits distilled within the United

States, from *molasses*, which shall be so exported, three cents per gallon, *as an equivalent for the duty laid upon molasses by the said act*, making further provision for the payment of the debts of the United States : Provided always, That the said allowance shall not be made, unless the said exporter or exporters shall observe the regulations hereinafter prescribed : And provided further, That nothing herein contained shall be construed to alter the provisions in the said former act, concerning drawbacks or allowances, in nature thereof, upon spirits imported prior to the first day of July next."

Section 52 deals with "Proceedings to obtain drawback or allowance on exportation." The then existing duty on molasses was  $2\frac{1}{2}$  cents per gallon (See section 1, act of July 4, 1789). The drawback on spirits distilled from molasses was increased by Section 5 of the Act of March 3, 1797 (1st U. S. Stat., 503) and still further increased by Section 5 of the Act of May 13, 1800 (2 U. S. Stat., 84).

Early provision was made for drawbacks upon refined sugar. Section 6 of the Act of April 30, 1816 (3 U. S. Stat., 340), is typical of this sort of legislation :

"SEC. 6. And be it further enacted, That in addition to the duty at present authorized to be drawn back on sugar refined within the United States, and exported therefrom, there may hereafter be drawn back on such refined sugar, when made out of sugar imported into the United States, the further sum of four cents per pound without deduction, which shall be allowed under the same provisions with the duty now permitted to be drawn back ; and, furthermore, on the express condition that the person exporting the same shall swear, or affirm that the same, according to his belief, was made out of sugar imported from a foreign port or place ; which oath or affirmation, in case the collector of the customs shall not be satisfied therewith, shall be supported by the certificate of a reputable refiner of sugar to the same effect, and that the drawback on refined sugar hereto-

fore imported, be allowed subject to the regulations applicable to the drawback of duties on other imported articles."

Almost coincident with the passage of this law Congress enacted a duty of three cents a pound on raw sugar (See section 6, tariff act of April 27, 1816, 3 U. S. Stat., 312).

Under Schedule I. of the Act of July 30, 1846, exempting certain articles from duty is found this language :

" Goods, wares and merchandise, the growth, produce, or manufacture, of the United States, exported to a foreign country and brought back to the United States in the same condition as when exported, upon which *no drawback or bounty has been allowed.*"

9 U. S. Stat., 49.

Allowances or drawbacks have thus been a part of the fiscal policy of the United States from the first. They are granted on exportation and sometimes, as in the case of the allowance upon spirits distilled from molasses and refined sugar made from raw sugar, the allowance has been *flat* and only approximating the import duties upon molasses and raw sugar. Nobody has ever conceived, however, that such drawbacks or allowances were for this reason in the nature of bounties as that term is used in Paragraph E of our existing tariff law and this is true in spite of the fact that the word "bounty" was used in connection with the term "drawback" in the Act of 1846 just quoted. It is safe to say that our Government would be quick to controvert any contention that such a drawback constituted a bounty or grant within the meaning of our existing law and would vigorously protest any attempt of a foreign government to penalize it as such. And yet it is relatively easy to marshal considerable argument in support of the contention that a drawback is an indirect bounty.

A brief allusion to our legislative history in connection with the New England fisheries is interesting in this connec-

tion. By section 4 of the act of July 4, 1789 (1 U. S. Stat., 27) it was provided :

"SEC. 4. And be it (further) enacted by the authority aforesaid, That there shall be allowed and paid on every quintal of dried, and on every barrel of pickled fish, of the fisheries of the United States, and on every barrel of salted provision of the United States, exported to any country without the limits thereof, in lieu of a drawback of the duties imposed on the importation of the salt employed and expended therein, viz :

On every quintal of dried fish, five cents.

On every barrel of pickled fish, five cents.

On every barrel of salted provision, five cents."

This is another instance of the familiar allowance in lieu of drawback and as an equivalent for duties paid. Subsequently the law of February 16, 1792 was passed (1 U. S. Stat., 229) Section 1 provided :

"SEC. 1. Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the allowance now made upon the exportation of dried fish of the fisheries of the United States, in lieu of a drawback of the duties paid on the salt used in preserving the same, shall cease on all dried fish exported after the tenth day of June next, and as a commutation and equivalent therefor, there shall be afterwards paid on the last day of December annually, to the owner of every vessel or his agent, etc.  
\* \* \* Provided, That the allowance aforesaid on any one vessel, for one season, shall not exceed one hundred and seventy dollars."

A most interesting discussion ensued in the House on the passage of this bill. The debate was voluminous and we can only cite one or two extracts which are specially in point. Elbridge Gerry said (*Annals of Congress*, 2nd Congress, 1st session, pp. 375 *et al.*) :

" The proposed allowance has been called a bounty on occupation, and is said to be very different from that

encouragement, which is the incidental result of a general commercial system ; but in reality it is no bounty ; a bounty is a grant, made without any consideration whatever, as an equivalent ; and I have no idea of a bounty, which admits of receiving from the person, on whom it is conferred, the amount of what is granted. We have imposed a duty on salt, and thereby draw a certain sum of money from the fishermen ; the drawback is in all instances, the amount of the money received ; this is all we ask ; and we ask it for a set of men who are as well entitled to the regard of Government as any other class of citizens.

“ It has been supposed, that the allowance, made to the fishermen, will amount to a greater sum than the drawback on the exportation of the fish ; but I think it has been clearly shown that this will not be the case ; on the contrary, it is presumable, that the drawback on the fish would on the whole exceed the sum which is proposed to be allowed to the fishermen ; sometimes it might be more, sometimes less. The calculation is made on general principles ; and it is impossible to calculate to a single cent ; the quantity of salt to be expended on the fish, cannot be minutely ascertained ; but this was not heretofore considered as a sufficient reason why Congress should refuse to allow the drawback ; they allowed it, though in a different shape. It is now proposed to make a further commutation ; gentlemen call this a bounty on occupation ; but is there any proposition made for paying to the fishermen, or other persons concerned in the fishery, any sums which we have not previously received from them ? If this were the case, it would indeed be a bounty ; but if we beforehand receive from them as much as the allowance amounts to, there is no bounty granted at all.”

Mr. Madison said (*Ibid*, p. 386) :

“ Let me premise, however, to the remarks which I shall briefly offer, on the doctrine maintained by these gentlemen, that I make a material distinction in the



present case, between an allowance as a mere commutation and modification of a drawback, and an allowance in the nature of a real and positive bounty. I make a distinction also, as a subject of fair consideration at least, between a bounty granted under the particular terms in the constitution, 'a power to regulate trade,' and one granted under the indefinite terms which have been cited as authority on this occasion. I think, however, that the term 'bounty,' is in every point of view improper as it is here applied. not only because it may be offensive to some, and in the opinion of others carries a dangerous implication, but also because it does not express the true intention of the bill, as avowed, and advocated by its patrons themselves. For if, in the allowance, nothing more is proposed than a mere reimbursement of the sum advanced, it is only paying a debt; and when we pay a debt, we ought not to claim the merit of granting a bounty."

The bill as originally introduced provided: "That the bounty now allowed upon the exportation of dried fish of the fisheries of the United States, etc," and " \* \* \* provided that the bounty to be allowed and paid on any vessel for one season shall not exceed \$170." (Annals of Congress 2d Congress, page 362).

Bates in American Navigation devotes considerable space to this bill. He says (page 77 and 78):

"From its phraseology it was called the 'Fishing Bounty Bill.' It was denied that it was a *bounty* measure, simply one to continue the original law allowing a draw-back on the *salt* in salted fish exported, to insure that fishermen, and not exporters, got the benefits, and to regulate the employment of the fishermen. Lest its passage should be taken as sanctioning *the doctrine of bounties*, amendments were deemed necessary and were made. Then it passed the House by 38 to 21 and the Senate 23 to 4. As a Bounty Bill it would have been defeated."

The radical shift in this law of 1792 which required the allowance to be paid only to the owner of every vessel or his agent might conceivably raise some dispute as to whether the allowances made were or were not in fact bounties, but the argument that they were not bounties was apparently the view that prevailed by the votes of the members of the House. In any event the distinction thus early made by Madison and Gerry is the important thing to bear in mind.

Section 3329 of the Revised Statutes provides in detail that distillers of spirits may obtain export certificates in the nature of acquittance of internal revenue taxes—in other words, the internal revenue or excise tax is remitted on exportation. The remission of internal revenue taxes has never been construed to constitute a bounty. Unless such internal revenue tax were remitted on exportation, there might be indeed a question as to whether it would not amount to an export duty, which is prohibited by our Constitution.

These illustrations point to the irresistible deduction that the provision for a bounty or grant must be accorded some restricted meaning and that the whole spirit of the law requires the enforcement of distinction between a bounty on one side and a protective duty and a drawback or remission of tax on the other. All of these things may be said to be "grants" in the broad acceptance of that term, but obviously not all of them are the grants or bounties of the law.

The distinction here contended for, to wit, the common meaning given to the word "bounty" as differentiated from the word "drawback" in tariff parlance, is recognized by writers. Hamilton in his report of manufactures said :

"But the greatest obstacle of all to the successful prosecution of a new branch of industry in a country in which it was before unknown, consists, as far as the instances apply, in the bounties, premiums and other aids which are granted, in a variety of cases, by the

nations in which the establishments to be imitated are previously introduced. It is well known (and particular examples, in the course of this report, will be cited) that certain nations grant bounties on the exportation of particular commodities, to enable their own workmen to undersell and supplant all competitors in the countries to which those commodities are sent. Hence the undertakers of a new manufacture have to contend, not only with the natural disadvantages of a new undertaking, but with the gratuities and remunerations which other governments bestow."

Lodge's Works of Hamilton, Ed. 1885, Vol. III., p. 328.

\* \* \* \* \*

"Where duties on the materials of manufacture are not laid for the purpose of preventing a competition with some domestic production, the same reasons which recommend, as a general rule, the exemption of those materials from duties, would recommend, as a like general rule, the allowance of drawbacks in favor of the manufacturer. Accordingly, such drawbacks are familiar in countries which systematically pursue the business of manufactures."

*Ibid*, Vol. III., p. 375.

Thus, at the very threshold of our national existence, Hamilton gave to the words here in controversy those shades of meaning which Congress must have had in mind in enacting Paragraph E and provisions *in pari materia*.

It is beyond dispute that Section 5 of the Act of 1897, the original prototype of Paragraph E was inserted with special reference to the sugar industry and to countervail the system of ingenious export sugar bounties which had been adopted by some of the countries of Continental Europe. When the bill was on its passage through the Senate Mr. Aldrich, who had it in charge, said on May 25, 1897 :

"In the tables I have submitted no allusion is made to the bounty provisions contained in both the Senate

and House proposals. The adoption of these or similar provisions for countervailing duties seems to be a necessity if we are to develop the beet-sugar industry in the United States. Otherwise it will be possible for any foreign country, by extension of its bounties, to neutralize entirely the effect of our protective duties."

Cong. Rec., Vol. 30, Part 2, p. 1231.

It is to be noted that Hamilton used the word "premium" as synonymous with or in the nature of a "bounty." So under the existing law a "grant" must be in the nature of a bounty. It might be called a "premium" or by any other name. What it may be called is secondary. It is the inherent character of the thing itself that we are concerned with. It is a bounty in effect?

A definition which leaves nothing to be desired in the way of clearness is cited *in part* by Mr. Chief Justice FULLER in the *Passavant* case, 169 U. S., page 23.

"*Drawback*, a term used in commerce to signify the remitting or paying back upon the exportation of a commodity of the duties previously paid on it.

"A drawback is a device resorted to for enabling a commodity affected by taxes to be exported and sold in the foreign market on the same terms as if it had not been taxed at all. It differs in this from a bounty, that the latter enables a commodity to be sold for *less* than its natural cost, whereas a drawback enables it to be sold exactly at its natural cost. Were it not for the system of drawbacks it would be impossible, unless when a country enjoyed some very peculiar facilities of production, to export any commodity that was more heavily taxed at home than abroad. But the drawback obviates this difficulty, and enables merchants to export commodities loaded at home with heavy duties, and to sell them in the foreign markets on the same terms as those fetched from countries where they are not taxed."

Wharton's Law Lexicon, 11th Ed., p. 302.

In definitions of bounties and drawbacks cited in the Government brief before the board these distinctions were recognized :

" Ency. Brit., 11th Ed. (p. 551) :

" \* \* \* The object of a drawback is to enable commodities which are subject to taxation to be exported and sold in a foreign country on the *same* terms as goods from countries where they are untaxed. *It differs from a bounty in that the latter enables commodities to be sold abroad at less than their cost price ;*  
\* \* \* "

" Bouvier, Ed. 1914, 3rd Rev. (p. 940) :

" An allowance made by the government to merchants on the *re-exportation* of certain imported goods liable to duty which in some cases consists of the whole, in others of a part, of the duties which had been paid on importation. *Goods can thus be sold in a foreign market at their natural cost in the home market.*"

" Black's Law Dict., Ed. 1891 (p. 397) (Referring to drawback) :

" *It differs in this from a bounty, that the latter enables a commodity to be sold for less than its natural cost, whereas a drawback enables it to be sold exactly at its natural cost.*"

Our learned adversary, both before the board and the court of customs appeals, rested upon the contention that we must direct our inquiry to ascertain whether there is any encouragement of exportation. If that can be spelled out, then he would impose a countervailing duty on the theory that a bounty had been paid. Now our elaborate drawback system is frankly framed to encourage exportation and to enable our manufacturers to enter the world's market unburdened by taxes either on their finished product or on the materials entering into their finished products—to put it in another way, to offer commodities which stand them in on their books at the natural cost of production. Such is the purpose of remission upon exportation of internal revenue or excise taxes.

Although it has been part of our national policy from the beginning to remit internal revenue tax upon exportation, which nobody contends is a bounty within the meaning of our tariff laws, it is interesting to note that the board found itself driven by the logic of its decision to make this statement in commenting upon the fact that the domestic excise tax of 14s. 9d. per gallon was not treated by the collector as constituting a bounty :

“ We are not entirely certain that this takes the excise tax out of the provision of Paragraph E, but as the question is not before us we leave it undecided ” (R., 21).

The real question here is :  
What is this thing inherently ? Does it partake of the nature of a bounty or drawback ? The idea of a drawback does not of necessity imply the refunding of duties already paid. In the case at bar the excise tax, as we have seen, is estimated upon the entire amount of production, although paid only upon goods manufactured for domestic potable use. The extra costs due to excise control in effect amount to nothing more nor less than an additional excise tax upon the distiller. If the government in relieving the distiller of this entire excise tax burden in the case of spirits not destined for domestic potable use may remit the tax if it has not actually been paid, it may compensate him for that part of it which has been actually incurred in the way of expense by reason of extra cost. There is no difference in effect here, unless the act of remission or compensation has placed the distiller in a position of advantage by enabling him to offer his spirits for less than his natural cost of production. If the distiller has only been relieved as a result of the operation of the British laws of certain tax costs, as in this case, then we say there has clearly been no bounty paid or bestowed. The whole transaction is in the nature of a drawback and nothing else.

Here then we have a distinction which was no doubt in the minds of Congress in enacting the law. The intention was to "counteract any government subsidy to a foreign industry such as would give it an artificial advantage in competition with American industry" (Exhibit 5, R., 25). As stated in the summary of the British case (Exhibit 6, Annex A, R., 32): "No prejudice to American industry from bounty fed competition results now or ever has resulted from these allowances." Instead of enabling British spirits to be sold for less than their natural cost, the proof is ample that these allowances are approximate remuneration (inadequate as the record shows) for losses and hindrances due to excise regulation. They represent extra costs in excess of the natural costs and the reimbursements merely enables British spirits to be sold in the foreign market on the same terms as if they had not been taxed at all. The whole object and aim of the British policy is neatly summarized in language attributed to Sir H. Primrose of the Inland Revenue:

"Both the allowance and the surtax which date from 1860 aim at the same purpose, which is not to put the British producer of spirits in a position of advantage as compared with his foreign or colonial competitor, but to save him from being placed in a position of disadvantage."

Exhibit 11, R., 51.

Tested in the light of these distinctions, which have been judicially recognized, the allowances of this case are not bounties or grants within the statute. In the case of *United States vs. Hills Bros.*, 107 Fed. Rep., 107, the circuit court of appeals did not hold that the mere remission of the excise tax by Holland constituted a bounty, but that an actual bounty on production paid by the Netherlands Government, which under the operation of its laws the producer retained upon exportation, did amount to a bounty and to this extent

*only* was a countervailing duty imposed. A clear statement of what the facts were is found in the circuit court decision which was reversed.

"Holland lays an excise on sugar imported or raised for consumption, and gives a bounty for production. The producer is charged with the excise, and credited with the bounty by way of reduction. The bounty has been added to the regular duty upon this importation of sugar from that country, because the excise was remitted upon the exportation of it from that country, and so the bounty is said to be paid indirectly upon that exportation."

99 Fed. Rep., 425.

The circuit court of appeals did not agree with the reasoning of the court below, saying :

"The circuit court held that the bounty paid by the Netherlands government is a bounty upon production, and not a bounty upon exportation of the sugar, directly or indirectly. In this conclusion we are unable to concur. Without quoting the precise text of the various provisions of the Dutch law, it may be stated that it imposes on sugar (such as is here concerned), whether produced in or imported into Holland, an excise tax of 27 florins per 100 kilos. A so-called 'deduction,' which concededly is a bounty, or grant, or premium, is paid for the production of raw sugar of 2.50 florins per 100 kilos for the year in question, and for the production of refined sugar therefrom a further bounty of 0.34 florins per 100 kilos ; a total of 2.84 per 100 kilos. The amount of such premium or bounty is placed to the credit of the person to whom it is due in his excise account ; and it is provided that, if it 'should cause the credit to exceed the debit, the difference shall be paid to the manufacturer or refiner from the revenue from the excise of the year from which the deduction takes place.' In view of the great disparity between the bounty and the excise tax (there is a similar disparity for all kinds and grades



of sugar), it is quite evident that there can be no excess 'paid' from the government's revenues to any one who is liable for the excise tax. Finally, it is provided that sugar withdrawn for exportation to a foreign country, and actually exported, shall be exempt from the excise tax. That tax being thus eliminated from the debit side of the account, the manufacturer, or refiner receives from the government the excess of credit over debit, which is the precise amount of the bounty. Undoubtedly, this premium or 'deduction' is called a bounty on production, and is a bounty on production; but the other provisions of the law have the practical effect of making it, from the standpoint of other countries, a bounty on exportation."

107 Fed. Rep., pages 108, 109.

In *Downs vs. United States*, 187 U. S., 496 (the Russian Sugar Bounty case), it will be seen upon analysis that this Court did not hold that the remission of an excise tax on exported sugar constituted a bounty. There was an excise tax imposed upon the production of Russian sugar which was remitted in that case, but the amount of this excise tax was not added as a countervailing duty and the Government did not contend that it constituted a bounty. Neither did the Court so hold. The case is somewhat complicated and its meaning and scope is only apparent after careful reading. The facts were that the Russian Government annually determined the total quantity of domestic sugar needed for home consumption and controlled both the production and the price. A certain normal and fixed amount of production was allotted to each factory, called free sugar. The excessive production over the amount fixed for home consumption was proportioned or distributed among the factories, and was identified as some specified variety of reserve or surplus sugar. Sugar from these reserves could only find its way into the home market under ordinary conditions, except on the payment of a double excise tax which was practically prohibitive. The

effect was to encourage exportation of all reserve sugar. Upon exportation all excise taxes were remitted. Under the operation of a complicated system, certain assignment or transfer certificates were issued which enabled "free sugar" to be exported and an equivalent amount of "surplus sugar" to be substituted for it. The court said:

"It is practically admitted in this case that a bounty equal to the value of these certificates is paid by the Russian Government, and the main argument of the petitioner is addressed to the proposition that this bounty is paid not upon exportation but upon production."

It was the value of these certificates and not the remission of the excise which was held to constitute a bounty.

The board concedes that "the method by which the Russian domestic tax was levied and collected *differed materially* from that of the British tax here under consideration" (R., 20); and that "the facts of the case at bar differ radically from those of the sugar bounty case" (R., 21).

#### **V. Additional facts which show that these allowances are bona fide allowances and not bounties upon exportation.**

If these allowances were true bounties upon exportation, if they were devices more or less covertly, or ingeniously contrived, whereby British distillers can sell their spirits in the markets of the world for less than their natural cost, thus underselling and supplanting all competitors in the countries to which such spirits are sent, the allowances which the Government here complains of would be strictly confined to exported spirits.

We have already seen that these allowances are not paid upon the exportation of all spirits, but only upon those which

go through certain specified warehouses. We have also seen that the allowances are paid : (1) When compounded spirits are used in a customs warehouse for fortifying wines, etc. ; (2) When British spirits are consumed in the United Kingdom for industrial purposes ; foreign spirits also when so used get this allowance under the administration of a law designed to keep them on a parity with British spirits, as we shall presently point out ; (3) when they are used at universities and colleges, which is no doubt a subdivision of industrial use ; (4) when used as naval or ship's stores.

The Treasury Department in its memorandum of 1911, holding that these allowances were not export bounties cited the Revenue Act of 1906, with reference to spirits for industrial uses, and says :

“ The effect of this act is clearly to indicate that the allowance is a bona fide allowance, as stated in the act of 1860, and is not in any sense an export bounty ” (R., 46).

The importers' case successfully meets another test which strongly militates in their favor. If the British policy be, as is claimed, designed not to put the home producer of spirits in a position of advantage as compared with his foreign or colonial competitor, but to save him from being placed in a position of disadvantage, then we should expect the law to maintain the parity in the home as well as in the foreign market. *This is actually the case.* Spirits Act 1880, Sec. 123, Sub-section 5, provides :

“ Foreign spirits may not be used for methylation until the difference between the duty of customs chargeable thereon and the duty of excise chargeable on British spirits has been paid.”

If the allowances represent an additional excise tax, as is maintained, then the import duty on imported spirits

should, in order to maintain the parity, be the approximate equivalent of the real excise duty represented by the actual amount paid in cash to the Government, plus the amount of the allowances which are supposed to compensate for the extra costs due to the excise regulations. The excise duty on spirits distilled in the United Kingdom is 14s. 9d. per proof gallon (Imperial Tariff, Exhibit 4, for identification, page 33). The allowance on plain spirits, as we have seen, is 3d. This means that the excise duty burden on the distiller is 15s. on plain spirits. Dawson in his statement says (Exhibit 11, R., 49) :

“ It is also a fact that all importations of potable liquor pay not only the internal revenue tax but an addition of four pence per gallon before the same may be released for the British market.”

As we have seen, the distillers, pointing to this state of affairs, have sought to have the allowance increased to 4d. as more closely approximating the true amount of extra costs, but so far without success. The Treasury memorandum of April 17, 1911 (Exhibit 9, R., 45) enumerates this as one of the reasons why countervailing duty should not be assessed under the law of 1909, to-wit :

“ The fact that there is a greater amount of duty assessed per gallon upon imported spirits into Great Britain than there is assessed as excise upon domestic manufactured spirits in Great Britain, thus clearly indicating that the domestic distiller or rectifier is protected against competition at home ; and not merely protected by the allowance in question against competition in his export trade.”

It was alleged by the Government in the board brief that :

“ The inland revenue tax of Great Britain is 14/9 ; customs duty on imported liquor is 15/2. The difference, 5 pence, is in fact protection.”

There is no doubt protection in the sense suggested by the Treasury memorandum of 1911—in pursuance of its policy Great Britain does protect the domestic distiller *both* in the home market and in the export trade to the extent that he is saved from being placed in a position of disadvantage so far as his competitors are concerned by the operation of law which remunerates him for certain established extra costs. Does our adversary mean to imply that this 5 pence protection, as he calls it, amounts to a bounty? Let us assume for purposes of illustration that Great Britain laid no excise tax whatever on potable spirits. There would be no occasion then to pay allowances on account of excise regulations. Suppose now Great Britain did impose a customs duty of 5 pence per proof gallon on imported spirits, would our adversary argue that this was tantamount to a bounty or grant, and hence should be countervailed under our statute? If he would not so argue, how can he maintain that this surtax, which an analysis of the British statutes demonstrates is imposed to maintain the parity between the British and foreign distiller, should in the case at bar be regarded as a bounty?

The Finance Act of 1902 and the Revenue Act of 1906, as well as the Spirits Act of 1880, afford a perfect illustration of our contention that these allowances do represent remuneration for the extra costs due to excise control. We reproduce Section 8 of the Finance Act of 1902 :

“ 8.—(1) Where, in the case of any art or manufacture carried on by any person in which the use of spirits is required, it shall be proved to the satisfaction of the Commissioners of Inland Revenue that the use of methylated spirits is unsuitable or detrimental, they may, if they think fit, authorize that person to receive spirits without payment of duty for use in the art or manufacture upon giving security to their satisfaction that he will use the spirits in the art or manufac-

ture, and for no other purpose, and the spirits so used shall be exempt from duty :

“ Provided that foreign spirits may not be so received or used until the difference between the duty of customs chargeable thereon and the duty of excise chargeable on British spirits has been paid.”

Bearing in mind that the word “spirits” means all spirits, whether British or foreign, and that the word “duty” means customs duty as well as excise or internal revenue duty, it is plain that both British and foreign spirits could under that provision be used for industrial purposes free of all duty, except that under the proviso foreign spirits when so used were chargeable with the difference between the customs duty and the excise duty. In other words, as we have seen, this difference approximately represented the amount of allowances paid on account of excise control and the imposition of this difference on foreign spirits was clearly designed to preserve the parity between foreign and domestic spirits in the home market. Here, as in the export trade, we see a reflection of the policy to save the British producer merely from being placed in a position of disadvantage. At that time there was no allowance paid when spirits were used for industrial purposes. This subsequently received the attention of an official Committee as appears from Exhibit 6, Annex B (R., 33), which we quote in full :

“ That something more is required in order to place spirit used as an instrument or material of manufacture on a footing satisfactory in a matter of cost. *Anything in the nature of a bounty is undesirable.* But seeing that on the price of spirit the very existence of certain industries may depend, and that for all industries using alcohol the price of the spirit is an important factor for that portion of trade that lies outside the home market, we are strongly of opinion that it is desirable to make such arrangements as will free the price of industrial

spirit from the enhancement due to the indirect influence of the spirit duties. It would surely be disastrous if, to the mischief that the drinking of alcohol causes by diminution in the efficiency of labour, the taxation of alcohol should be allowed to add the further mischief of narrowing the openings for the employment of labour.

"In our opinion, there is only one way in which the influence of the spirit duties can be satisfactorily counteracted in favor of industrial alcohol. To diminish the excise restrictions on the manufacture of alcohol might mitigate the influence, but probably not to any great extent. For with a duty of over 1000 per cent. on the prime cost of an article, revenue control must of necessity be strict. Moreover, the gain to industry would be made at the risk of the revenue, and a duty that yields over £20,000,000 per annum to the Exchequer is a public interest that cannot be trifled with. To relieve imported spirit from the surtax which is needed to counterbalance the burden imposed on production in this country by the excise regulations would be manifestly unfair; and its effect would be to give to the State aided spirits from Germany or Russia a practical monopoly of the market in this country for industrial spirit. *The only adequate course, it seems to us, is to neutralize, for industrial spirit, the enhanced cost of production due to excise control, in the same way as the enhanced cost is neutralized for exports, viz.: by granting an allowance on such spirit at such rate as may from time to time be taken as the equivalent of the increase in cost of production due to revenue restrictions. At the present time, the rate is taken at 3d. per proof gallon for plain spirits, and the allowance would accordingly be at this rate, and should be paid equally on all industrial spirit whether it be of British or of foreign origin.*"

The result was the allowance provided for in Section 1 of the Revenue Act of 1906, which applies to all industrial spirit whether it be of British or of foreign origin. Under the law and regulation, therefore, the effect is this: Foreign spirits

may be used for industrial purposes under conditions prescribed by the Commissioners of Inland Revenue upon paying the difference between the customs duty and the excise duty, to wit, virtually an amount representing the allowances. When the Commissioners of Inland Revenue get satisfactory proof that foreign spirits have actually been so used such spirits receive the allowances, just as British spirits get them under similar conditions. The result is the maintenance of that parity which is so clearly the policy of the British law. There is, to be sure, a slight difference between the amount collected by the government, which represents the difference between the customs duty and the excise duty, and the amount of the allowances which the government retains, but that is exactly comparable to the allowances made early in the history of our government on account of imported molasses and raw sugar. There could be no clearer demonstration of the real purpose of the British statutes governing allowances.

### Conclusion.

Since the days of Hamilton this Government has remitted excise taxes upon exportation and, with interruptions, has pretty consistently adhered to the protective system. It is, therefore, not to be presumed that in penalizing bounties or grants by the imposition of countervailing duties Congress intended to condemn the very thing which it has fostered so continuously. If an exercise remission or drawback does not constitute a bounty under our laws and if, as seems clear from the authorities, the bounty or grant of the Tariff is something which tends to enable the producer to sell his product below the *natural* cost of production and thus derange the fiscal system of protectionist states, then *these* allowances clearly are not bounties or grants within the scope and meaning of



our law. Mr. Bryce went to the heart of this matter when he said to the State Department in 1911 (Exhibit 5, R., 24):

"Drawbacks of duty accorded by protectionist states are not subjected to retaliatory measures and it is manifestly inequitable that an analogous allowance due, as has been shown to a preference for free trade over protectionist institutions should be singled out for penalty." \* \* \*

"To penalize these drawbacks (allowances) is therefore equivalent to penalizing the United Kingdom for its liberal treatment of and low duties on foreign imports. But for this free trade policy no high excise on spirits would have been required, no elaborate regulations embarrassing to production would have been established and no compensating allowances would have been paid" (R., 26).

The board says "the policy or *purpose* of the British law is not a subject with which we can deal" (R., 18) though a moment later on the same page of the opinion it says "we may with perfect propriety look to its *purpose*." This view of its functions is a trifle perplexing, but surely we must here determine whether these allowances are in fact bounties upon exportation, just as this Court in the Russian Sugar Bounty case scrutinized searchingly the intricate internal regulations of Russia, going so far as to examine the proceedings of the International Sugar Conference at Brussels, in order to pass upon the question whether the sugar certificates in that case did or did not constitute a bounty upon exportation. So here we must patiently analyze and dissect the real facts and in doing this, the history of the legislation, all the circumstances surrounding its enactment and the statutes themselves *in pari materia* may be profitably studied.

Wharton's Law Lexicon, 11th Edition (p. 129), *supra*, asserts that "Bounties have been entirely abolished in England, and the Sugar Convention Act, 1903, 3 Edw. 7, c. 21, has authorized restrictions upon the importation of bounty-fed

sugar into the United Kingdom." So the policies of Great Britain and the United States with respect to bounties are strikingly alike. The economic limitation of the term "bounty" must also be much the same. The United Kingdom no more pays or bestows a bounty or grant in the operation of its internal revenue system which calls for retaliation under the laws of the United States than the United States pays or bestows a bounty or grant under the operation of its internal revenue and protective tariff system. If Great Britain pays or bestows a bounty or grant in the narrow sense for which the Government here contends, then by the same test it must be conceded that the United States does likewise.

If it be proper to free goods from every form of excise tax so that they may enter the foreign market just as if no excise tax had been imposed at all, without incurring the penalty of our bounty statutes, then manifestly we have no concern with the amount of the excise tax, or what constitutes it. All this may very well vary in different countries according to the peculiar conditions and necessities of each country. Our inquiry is : Does the thing complained of, called in this instance an *allowance*, do anything more than put the product affected in the world's market free of all excise burden ?

**It is respectfully submitted that it does not. The decision of the Court of Customs Appeals imposing a countervailing duty of three pence per gallon on plain spirits and five pence per gallon on compounded spirits should be reversed.**

Respectfully submitted,

ALBERT H. WASHBURN,

Attorney for G. S. Nicholas & Co., *et al.*



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# Supreme Court of the United States.

OCTOBER TERM, 1917.

No. 311.

ALEX. D. SHAW & Co. *et al.*,  
Petitioners,

v.

THE UNITED STATES.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
CUSTOMS APPEALS.

## BRIEF FOR PETITIONERS.

MAY IT PLEASE THE COURT:

Four ordinary English words stand out prominently as the pith of this case.

They are: Allowance, Bounty, Drawback, Grant.

Whatever may be the Dictionary or Judicial definitions of these four words, no one can deny that there is *some* difference between the meaning of each of these words and that of every one of the others.

The task of this Court will be to determine whether Congress, in an Act which contains only *two* of these four words meant to include the *other* two for the purpose of imposing a Counter-vailing duty on British spirits.



We think we could hardly begin better than by quoting that well-known remark of Mr. Justice Swayne in *Smythe v. Fiske*, 23 Wallace, 374 (380):—"A thing may be within the letter of a statute and not within its meaning, and within its meaning, though not within its letter. The intention of the lawmaker is the law."

### **Brief History of the Case.**

There is no dispute about the facts.

1860. Great Britain, under the Cobden treaty with France substituted a somewhat comprehensive Free Trade policy for the then existing Protective Tariff system. This threw upon the British Government the burden of raising by Internal Revenue that large portion of its revenue which had come from Import Duties.

The British Act by which this was attempted is known as 23 and 24 Victoria, Cap. 129, dated August 28, 1860, and is entitled: "An Act to Grant Excise Duties on British Spirits and on Spirits imported from the Channel Islands." Section IV of the act (p. 56, T. R.) provides for an "Allowance" to Distillers or Proprietors of certain Spirits on the exportation thereof from a *Duty-free Warehouse*, or on depositing the same in a *Customs-Warehouse* (Exhibit 1, a). This "allowance" was Twopence a gallon to the distiller, or Threepence to the rectifier.

1865. By Section 12, of Cap. 98, of 28 and 29 Victoria, entitled An Act to allow British Compounded Spirits to be warehoused upon Drawback (p. 57, T. R.), the "allowance" to the rectifier was not to be paid "until a Certificate from the proper Officer of Customs shall be produced \* \* \* that such Spirits have been actually exported or used as aforesaid" (Exhibit 1, b).

1880. An Act to Consolidate and Amend the Law relating to the Manufacture and Sale of Spirits, dated August 26, 1880 (43 and 44 Victoria, Cap. 24) was passed. This is generally known as the Spirits Act of 1880 (Exhibit 1, c).

This Act deserves a somewhat full analysis. We are not quite satisfied with the analysis by the Court of Customs Appeals.

### **Spirits Act of 1880.**

There is no dispute that the Spirits Act of 1880 is the foundation of the present practice of manufacture and sale of spirits in Great Britain and Ireland.

This act came into operation January 1, 1881, and prescribes in great detail (sections 5 to 45) how distilling should be carried on; the distillery being on the distiller's own premises and every step of mashing, brewing, making wort or wash, and distilling being subject to the careful inspection of the Excise officers, for which purpose the distillery must be within a quarter of a mile of a market town (ordinarily). It will be seen from section 47 that duty is chargeable on the amount of spirits distilled, the duty being 14s. 9d. per gallon, and such duty is paid on all of the spirits which are withdrawn from the spirit store for *domestic consumption*. That means *Drink*.

The distiller is obliged to have a *spirit store* which is kept locked by the Excise officer (section 13), and to this store the spirits must be removed at the end of each distilling period, where the spirits must be filled into casks in the presence of the officer (section 43), but cannot remain in the store more than 10 days.

There are three kinds of warehouses in each of which spirits removed from the spirit store may be kept without paying duty. These are the *dis-*

*tiller's warehouse* on his own premises (section 49), an *Excise warehouse* (section 50) and a *Crown warehouse* (section 54).

In the *distiller's warehouse*, the spirits may be warehoused in casks or in vats upon giving the prescribed security (section 56).

When the distiller has given proper security under which he may remove spirits from one warehouse to another (section 57) he may, under that security, remove the spirits direct from his spirit store to an Excise warehouse or Customs warehouse. The officer in charge of the warehouse gives a certificate as to the spirits warehoused, on receipt of which the officer in charge of the distillery deducts from the number of gallons of spirits chargeable with duty the number of gallons warehoused computed at proof.

The distiller may transfer spirits in a distiller's or Excise warehouse to a purchaser and thereby become free from paying duty, but no second transfer can be made (sections 62 and 63).

Instead of sending spirits from the store to a Warehouse for storage the distiller may remove them from his *store* duty free for exportation or for ship's stores (section 45).

Spirits warehoused may also be delivered out without payment of duty for ship's stores (section 82) or for methylation (section 83).

Spirits in the distiller's or Excise warehouses may be vatted, blended, racked, either on payment of duty or otherwise (section 64). Or plain spirits may be reduced with water to some extent, supplied through a meter (section 67). Or the spirits may be bottled in the warehouse (section 68). Or sweetened or colored, subject to strict regulations (section 69).

When spirits are removed from a warehouse for home consumption the duty has to be paid (section 79).

When taken out for exportation, either from a distiller's or an Excise warehouse under proper regulations, no duty is paid (section 81).

It thus appears that, as far as plain British spirits are concerned, no duty is paid on those which are methylated for use in the arts or manufactures, those which are taken for ship's stores, or those which are exported.

It also appears that spirits may be sent either as ship's stores or for export from (1) the distiller's *spirit store*, direct (section 45), or (2) the *distiller's warehouse*, or (3) an *Excise* or *Customs warehouse*.

Some definitions occur in this Act of 1880, which it might be well to reproduce:

Section 3. \* \* \* "Spirits" means spirits of any description, and includes all liquors mixed with spirits, and all mixtures, compounds, or preparations made with spirits;

"Low wines" means spirits of the first extraction conveyed into a low wines receiver;

"Feints" means spirits conveyed into a feints receiver;

"British spirits" means any British spirits (except low wine and feints), which have not had any flavor communicated thereto or ingredient or material mixed therewith;

"Spirits of wine" means rectified spirits of the strength of not less than forty-three degrees above proof;

"British Compounds" means spirits redistilled or which have any flavor communicated thereto, or ingredient or material mixed therewith; \* \* \*

"Methylate" means to mix spirits with some substance in such manner as to render the mixture unfit for use as a beverage, and "methylated spirits" means spirits so mixed to the satisfaction of the Commissioners.

The more important of the details which show the sort of schoolmaster supervision exercised by the officers of the law over the acts of distillation are as follows:

SECTION 26. (1) Every distiller must, at least six days before beginning to brew wort, or, if he has discontinued brewing wort for more than one month, before recommencing to brew wort, give the proper officer a written notice, specifying the day on which he intends so to brew or recommence brewing.

SECTION 27. A distiller must, at least four hours before he mashes any materials, or brews for making wort, give the officer in charge of the distillery written notice specifying the day and hour when the mashing or brewing is to be commenced.

SECTION 28. (1) All wort must be collected into the fermenting back within eight hours after it has begun to run into the back.

SECTION 42. (1) An officer may take a sample of any wort, wash, low wines, feints, or spirits from any vessel or utensil in a distillery, and the gravity or strength of any sample so taken shall be deemed the gravity or strength of the whole contents of the vessel or utensil from which it is taken.

SECTION 46. (1) The duty on spirits made in a distillery is to be charged in respect of the wort or wash, the low wines, and the feints and spirits made in the distillery, and shall be payable according to such of those modes of charge as produces the greatest amount of duty.

(2) In respect of every one hundred gallons of wort or wash the duty is to be charged for a quantity of spirits at the rate of one gallon of spirits at

proof for every five degrees of attenuation, that is to say, for every five degrees of difference between the highest gravity of the wort as declared by the distiller or found by the officer (whichever is the greater) without any allowance for waste, bub, dregs, yeast, or other matter, and the lowest gravity of the wash as found by the officer before distillation.

(3) In respect of low wines the duty is to be charged on the quantity of spirits at proof contained therein, less five per centum.

(4) In respect of feints and spirits the duty is to be charged on the quantity of spirits at proof after deducting the feints (if any) remaining from a previous distillation and included in the account of feints and spirits last produced.

(5) In calculating the duty payable on spirits an allowance shall be made for any deficiency occasioned by natural waste, subject to the following provisions—

(a) The allowance shall not exceed one and a half per centum on the spirits removed from the receiver to the store.

(b) If the deficiency exceeds three per centum on the spirits so removed no allowance whatever shall be made.

SECTION 47. (1) The proper officer shall from time to time make out in the prescribed manner and for the prescribed period a return of the quantity of spirits for which a distiller is chargeable, and of the duty payable thereon, and shall, if required in writing by the distiller, deliver to him, or leave at his distillery, a copy of this return, signed by the officer.

The Spirits Act of 1880 having with great care regulated the distilling of plain spirits, proceeds

(sections 86 to 95) to take equal care of the rectifying.

The rectifier may warehouse in an Excise or Customs warehouse for exportation or for ship's stores or for home consumption, British compound spirits (section 95) and we have already seen in section 64 that spirits might be blended and bottled in the excise warehouse.

We are not here concerned with the rest of the Act which concerns dealers, retailers, methylated spirits, etc.

The attention of the Court is called to the fact that there is no requirement that the distiller should submit to these burdensome details if the spirits are to be exported.

1881. The Customs and England Revenue Act, 44 Vict., Chap. 12, was passed, of which Sections 16 and 17 provided for increasing the allowance to rectifiers and compounders from 3d. per gallon to 4d. and for the warehousing of foreign wines (Exhibit 1, *d*).

1885. Another Customs and England Revenue Act was passed, known as 48 and 49 Vict., Chap. 51, (Exhibit 1, *e*), of which Section 3 reads as follows:

“(1) Where any spirits distilled and rectified in the United Kingdom are exported from an Excise or Customs warehouse, or are used in any such warehouse for fortifying wines, or for any other purpose to which foreign spirits may be applied, there shall be paid in respect of every gallon of such spirits, computed at hydrometer proof, the following allowances; that is to say,—

In respect of plain British spirits, and spirits of the nature of spirits of wine, an allowance of twopence, and

In respect of British compounded spirits, an allowance of fourpence.

(2) The allowance shall be paid, in the case of spirits exported, to the person who shall have given security for the exportation, and in the case of spirits used in warehouse, to the person upon whose written request the spirits shall have been so used.

(3) The allowances shall not be paid until a certificate from the proper officer of Inland Revenue or Customs shall be produced to the officer of Inland Revenue appointed to pay the same, that such spirits have been actually exported or used as aforesaid."

1889. A Revenue Act was passed, entitled 52 and 53 Vict., Chap. 42 (Exhibit 1, f), of which Section 21 reads as follows:

"Notwithstanding anything to the contrary in section three of the Customs and Inland Revenue Act, 1885, the allowances payable under that section may, in the case of British compounded spirits of a strength exceeding eleven degrees over proof, and spirits of the nature of spirits of wine, be paid, on the production of a certificate from the proper officer of inland revenue or customs that the same have been deposited in an excise or customs warehouse, to the person in whose name they are warehoused; and any payment heretofore made on the deposit of such spirits shall be deemed to have been legally made in discharge of all claims to any allowance payable in respect thereof."

Up to this time Congress had not (apparently) passed any countervailing duty section, but

1890. Congress passed a Tariff Act (26 Stat. L. 567), of which paragraph 237 imposed a countervailing duty upon sugar on which a "Bounty" had been bestowed.

We ask the Court to note that when Congress passed this first C. V. D. Act of 1890, Congress only selected sugar as the foreign goods on which to levy



a C. V. D., and confined itself to the word "Bounty." The British practice, however, of paying the Allowance (now in question for the first time before this Court) had been going on for thirty years, and the complete practice under the Spirits Act of 1880 (the present practice also) had been carried out for ten years.

It hardly requires argument to show that by the Tariff Act of 1890, Congress did not intend to countervail British spirits, or anything else except sugar.

1894. (28 Stat., L. 509) Congress again imposed a C. V. D. on sugar, and again confined itself to the word "Bounty".

1895. The British Finance Act, 58 Vict., Chap. 16, was passed (Exhibit 1, *g*) of which Sections 6 and 7 read as follows:

"6. Regulations of the Commissioners of Inland Revenue, under section one hundred and fifty-nine of the Spirits Act, 1880, may regulate the removal for exportation of methylated spirits, and where spirits used for methylation are removed from a place of methylation and exported in accordance with those regulations, there shall be paid to the exporter an allowance of twopence for every gallon of such spirits, computed at hydrometer proof, and subsection three of section three of the Customs and Inland Revenue Act of 1885 shall apply, as if the spirits were exported and the allowance made in pursuance of that section.

7. After the thirty-first day of December, one thousand eight hundred and ninety-five, section one hundred and nineteen of the Customs Consolidation Act, 1876 (which limits the time for the payment of a drawback on the exportation of goods), shall extend to the payment of any allowance in respect of spirits exported, used, or deposited, which is payable under section three of the Customs and Inland Revenue Act, 1885, as amended by section twenty-one of the

Revenue Act, 1889, and to an allowance in respect of methylated spirits exported which is payable under this Act, and to the payment of any drawback of excise which is allowed on the exportation of any goods, in like manner as if it were in terms made applicable thereto, and the date of user or deposit were the date of shipment."

1897. Congress (for the first time) passed a Tariff Act (30 Stat., L. 151) containing a general countervailing provision not confined to sugar. Of this Act, Section 5 reads as follows:

"That whenever any country, dependency, colony, province or other political subdivision of government shall pay or bestow, directly or indirectly, any bounty or grant upon the exportation of any article or merchandise from such country, dependency, colony, province, or other political subdivision of government, and such article or merchandise is dutiable under the provisions of this act, then upon the importation of any such article or merchandise into the United States, whether the same shall be imported directly from the country of production or otherwise, and whether such article or merchandise is imported in the same condition as when exported from the country of production or has been changed in condition by remanufacture or otherwise, there shall be levied and paid, in all such cases, in addition to the duties otherwise imposed by this act, an additional duty equal to the net amount of such bounty or grant, however the same be paid or bestowed. The net amount of all such bounties or grants shall be from time to time ascertained, determined, and declared by the Secretary of the Treasury, who shall make all needful regulations for the identification of such articles and merchandise and for the assessment and collection of such additional duties."

Here the word "Grant" is joined with the word "Bounty".

This statute also imposed a C. V. D. (c. 11, sec. 1, schedule M, paragraph 393) upon wood pulp brought here from a country which imposed an export duty on pulp wood.

1898. In April the Treasury Department, by T. D. 19256, ruled that sugar grown in Germany and refined in England was held subject to countervailing duty. This decision was sustained by the Board of General Appraisers, No. 4133, and does not seem to have been carried any further.

The Supreme Court of the United States, in the *Passavant* case gave a definition of "Drawback". As the case arose under the old law, there was no question of countervailing duty, but the Court seems to have held that the Drawback, being the remission of the tax on hosiery, was considered by the Treasury Department as a part of the market price in fixing the *ad valorem* duty.

In September the Treasury Department, by T. D. 20039, held that Holland sugar, having received a Bounty on production was subject to countervailing duty. This case was carried to the Circuit Court of Appeals in 1901.

1899. The Treasury Department, by T. D. 21501, followed T. D. 20039.

1901. In April the Treasury Department, by T. D. 22984, held that sugar received a Bounty in Russia and was subject to countervailing duty. This became the famous Russian Sugar Bounty case, which finally reached the Supreme Court of the United States.

1902. The British Finance Act, 2 Edw. 7, Chap. 7, (Exhibit 1, h), was passed, of which Section 5 reads as follows:

"(1) As from the seventeenth day of June, nineteen hundred and two, the Customs duty

of ten shillings and fourpence on imported spirits, imposed by section seven of the Customs and Inland Revenue Act, 1881, shall, as respects spirits other than rum and brandy, be ten shillings and fivepence, and the allowance of twopence and fourpence payable in respect of spirits under section three of the Customs and Inland Revenue Act, 1885, and section six of the Finance Act, 1895, shall be respectively threepence and fivepence.

(2) For the purpose of Section three of the Customs and Inland Revenue Act, 1885, spirits shall be deemed to be British plain spirits, or spirits in the nature of spirits of wine, and not to be British compounded spirits, unless they are proved to the satisfaction of the Commissioners of Inland Revenue to have been distinctly altered in character by redistillation with or without the addition of flavouring matter."

1906. The British Revenue Act, 6 Edw. 7, Chap. 20 (Exhibit 1, i) was passed, of which Section 1 reads as follows:

"(1) Where any spirits are used by an authorised methylator for making industrial methylated spirits, or are received by any person for use in any art or manufacture under section eight of the Finance Act, 1902, the like allowance shall be paid to the authorised methylator or to the person by whom the spirits are received, as the case may be, in respect of those spirits as is payable on the exportation of plain British spirits, and the Commissioners may by regulations prescribe the time and manner of the payment of the allowance and the proof to be given that the spirits have been or are to be used as aforesaid.

(2) No allowance shall be payable under this section on methylic alcohol, but foreign methylic alcohol may be received and used under section eight of the finance act, 1902, without payment of the difference of duty mentioned in that section.

(3) One-nineteenth shall, as respects methylated spirits other than mineralized methylated

spirits, be substituted for one-ninth as the minimum proportion of the substance or combination of substances to be mixed with spirits under subsection (3) of section one hundred and twenty-three of the Spirits Act, 1880.

(4) Notwithstanding anything in subsection (2) of section eight of the Finance Act, 1902, an applicant under that section shall not be required to pay any expenses incurred in placing an officer in charge of his premises, except such expenses as, in the opinion of the Commissioners, are incurred for special attendance of the officer, made to meet the convenience of the applicant.

(5) Such quantity as the Commissioners may authorise by regulations in each case shall be substituted for fifty gallons in subsection (c) of section one hundred and twenty-six of the Spirits Act, 1880, as the maximum quantity of methylated spirits that may be received or be in the possession of a retailer at any one time; and for one gallon in subsections (e) and (f) of that section as the maximum quantity of methylated spirits which a retailer may receive from another retailer at a time, and as the maximum quantity which a retailer may sell to or for the use of any one person at a time respectively."

There has been no change in the British system since that date.

1909. Congress passed another Tariff Act, and in this new Act the above quoted paragraph of Section 5 of the Act of 1897 was introduced, *without change*, as a part of Section 6 of the new Act.

1910. Mr. Rufus Fleming, U. S. Consul at Edinburgh, Scotland, wrote three letters dated respectively March 23, 1910, April 28, 1910 and June 7, 1910, which are found printed T. R. 40 to 41, as part of Exhibit 7.

1911. On January 21 the Treasury Department, by T. D. 31229, made its first attempt to place a countervailing duty on British Spirits by reason of the Allowances so often referred to in the previous documents.

This at once led to an earnest protest on behalf of the British government and the various distillers and importers interested, all of which is set forth in Exhibits 5 and 6 (pp. 23 to 39, T. R.).

On April 18 the Treasury Department, by T. D. 31490, revoked T. D. 31229, and decided that these Allowances were not Bounties or Grants. The language of said decision, T. D. 31490, is as follows:

"Upon a further consideration of the laws of the United Kingdom of Great Britain and Ireland relating to the *allowance* granted upon exported British spirits, and in view of the additional laws and facts in relation thereto submitted by officers of the said Government, the department has reached the conclusion that the said *allowance is not a bounty or grant within the meaning of section 6 of the tariff act of August 5, 1909*. Consequently no countervailing duty will be assessed upon British spirits imported into the United States. T. D. 31229, is hereby revoked."

No countervailing duty was, therefore, imposed.

1913. On October 3 Congress passed a new Tariff Act of which paragraph E of Section IV was a literal copy of the paragraph above referred to of Section 6 of the Act of 1909, which in turn had been copied literally from Section 5 of the Act of 1897.

We call the attention of the Court to the fact that this paragraph (thrice enacted) is the only paragraph in our statutes relating to countervailing duties which is not confined to sugar.

On August 5 of this year Mr. Fleming had writ-

ten another letter which is found on page 16 T. R. as part of Exhibit 7.

1914. Early in this year the Treasury Department intimated that it was going to make the decision which subsequently appeared on May 25, 1914, and which is the root of this litigation, T. D. 34466, and which reads as follows:

“TREASURY DEPARTMENT, *May 25, 1914.*

*To collectors and other officers of the customs:*

Your attention is invited to T. D. 31229 of January 21, 1911, imposing countervailing duties on certain British spirits equivalent to the export allowances granted by the Government of the United Kingdom of Great Britain and Ireland and to the revocation of that decision in T. D. 31490 of April 18, 1911.

The Secretary of State has transmitted to the department a consular report which furnishes additional information in the matter and the Attorney General has stated that the question of whether the said export allowances are bounties within the meaning of paragraph E of section 4 of the tariff act of October 3, 1913, is one better fitted for judicial determination than for an expression of his opinion.

The department, after further careful consideration of the matter, is of the opinion that the allowances in question (except that on ‘methylated spirits’) constitute export Bounties within the meaning of said paragraph of law. Countervailing duties are, therefore, reimposed in regulations as follows: etc.

6. These regulations will take effect 30 days after date.

CHAS. S. HAMLIN, Acting Secretary.”

Thereupon the British Embassy again protested, as appears by Exhibits 8, 9, 10 and 11, dating from March 19 to May 1, 1914. But they were of no avail.

Acting under this most recent decision of the Treasury Department, the Collector of Customs of

New York imposed countervailing duties on British Spirits equalling the British Allowances of 3d or 5d per gallon.

The goods in question have already paid a very high import duty of \$2.60 a case. The appellants in this particular case, No. 311, had already paid \$45,335.00 as the normal duty without protest. The additional or countervailing duty at the time of the first hearing before the Board, paid under protest, had amounted to \$1,603.75.

1915. On May 24 the protest was argued before the Board of General Appraisers, New York City, and overruled on July 16, 1915 (pp. 16 to 22, T. R.).

1916. On February 9 the appeal was argued before the Court of Customs Appeals and the Board was affirmed May 12, 1916 (pp. 55 to 73, T. R.).

On December 11 the petition for writs of *certiorari* was filed and granted December 18, 1916.

### **Argument.**

As was well said by the learned counsel for the Government in their first brief, "The law and the facts are so blended, that it is almost impossible to consider one without, at the same time, discussing the other."

The general trend of our argument was, therefore, necessarily foreshadowed during the brief history of the case.

The able counsel for appellants in the Companion case, 310 Nicholas *v. United States et al.*, will discuss more fully than I shall some of the points raised by these cases, notably the effect of Departmental Practice.



The present brief will be devoted mainly to laying before this Court the following three points:

1. The British Allowances have always been spoken of in British Statutes and other documents as "Allowances"; their nature, upon the evidence, is clearly an Allowance, not a Bounty, Grant or Drawback; the Allowances are not paid upon exportation (as such) nor upon exported goods (as such), but only upon goods which, whether subsequently used in the arts or otherwise kept out of potable consumption in Great Britain or Ireland, have been *voluntarily* submitted to the onerous details of complicated revenue regulations by having their distillation, compounding, rectifying or storage done in certain specified warehouses under Government control.

2. The uniform practice of the United States Supreme Court from 1791 to date, in interpreting Acts of Congress, has been to look to the intent of Congress and make that intent effective if in any way possible.

3. Congress, by its own legislation on the subject of Allowances, Bounties, Drawbacks and Grants, from 1791 to date, has clearly indicated that paragraph E of Section IV of the Tariff Act of October 3, 1913, was not intended to include these British Allowances as subjects of countervailing duty, but was so worded as to continue the custom, of fifty-three years' standing, and to admit British Spirits, plain or compound, without countervailing duty.

## POINT ONE.

**The British Allowances have always been spoken of in British Statutes and other documents as "Allowances"; their nature, upon the evidence, is clearly an Allowance; not a Bounty, Grant or Drawback; the Allowances are not paid upon exportation (as such) nor upon exported goods (as such), but only upon goods which, whether subsequently used in the arts or otherwise kept out of potable consumption in Great Britain or Ireland, have been *voluntarily* submitted to the onerous details of complicated revenue regulations by having their distillation, compounding, rectifying or storage, done in certain specified warehouses under Government control.**

The experience of our own Internal Revenue Officers in collecting the whisky taxes gives us some idea of the difficulties which faced the British Government when, in 1860, it threw its ports open, practically, to the free trade of the world, except as to distilled spirits. To make good to the Royal Exchequer, the revenue thus lost, the British Government undertook to raise a vast amount of needed revenue by an extremely heavy tax on every gallon of potable distilled spirits consumed in any part of Great Britain and Ireland. With the extensive Scottish and Irish coasts (to say nothing of those of England, Wales and the adjacent small islands), the temptation to smuggle liquor or to distil it in

some out of the way place on the coast and transport it stealthily at night to some other part of the country, whence it could be distributed to the "speak-easies", was well nigh irresistible to an immense number of people who resented or dreaded this oppressive tax.

Aware of all this, the British Government realized that it was imperative to organize the above described complete, inquisitorial, supervising system for the control of the work of the distiller and the rectifier so that the loss by illicit distillation should be reduced to a minimum.

On the other hand no people, probably, are so jealous of their individual rights of privacy as the British.

The British Government, therefore, was not willing to make a law compelling *every* gallon of domestic liquor to be distilled in the presence of a public officer. But it came as near to that as it dared; substituting patriotism in place of force as a motive.

The elaborate system devised, and put into operation with its burdens and details, as fully set out in the Spirits Act of 1880, Exhibit 1 (c) and the weight thus pressing upon the distiller and rectifier are quite well described in the correspondence from the British Embassy and the various documents, affidavits and explanations set forth in Exhibits 5, 6, 9, 10 and 11.

At the very beginning of this system, the British Government, in the Act of 1860, Section IV, recognized the "loss and hindrance" which would be "caused by excise regulations in distillation and rectification of spirits in the United Kingdom" under that system. And Mr. Gladstone, at some length, pleaded before the House of Commons, the right of distillers and rectifiers to such limitation of the imposed burdens as would not interfere with the effectiveness of the regulations.

We submit that it is an almost incredible distortion of the intent or effect of these Allowances to regard them as an encouragement to the exporting of distilled spirits, or as enabling the exporter to sell liquor to better advantage in foreign countries than distillers and rectifiers of other countries.

The only word, we believe, used by the British to denote this payment as to certain Spirits is "Allowance". For example:—Act of 1860 (Exhibit 1-a) "there shall be paid \* \* \* the Allowance of 2d per gallon;" Act of 1865 (Exhibit 1-b) Section 12, "the Allowance of 3d per gallon \* \* \* but such Allowance \* \* \*;" Act of 1881 (Exhibit 1-d) Section 16, "the Allowance of 3d per gallon \* \* \* shall be increased to 4d per gallon;" Act of 1885 (Exhibit 1-e) Section 3, "the following Allowances \* \* \* an Allowance of 2d \* \* \* an Allowance of 4d \* \* \* the Allowance shall be paid \* \* \* the Allowance shall not be paid;" Act of 1889 (Exhibit 1-f) Section 21, "the Allowances payable \* \* \* any Allowances payable;" Act of 1885 (Exhibit 1-g) Section 6, "an Allowance of 2d \* \* \* the Allowance made \* \* \* any Allowance in respect of \* \* \* an Allowance in respect of."

This same custom of calling this payment an "Allowance" (and using no other word for it) continued in the Acts of 1902 (Exhibit 1-h) and 1906 (Exhibit 1-i) and is used throughout during the other and later documentary evidence introduced. It was only the American Consul (Exhibit 6), who associated the word "bounty" with "allowance" in 1910 and afterwards.

The evidence referred to shows absolutely that from 1860 to 1897 (and later) the open, public, statutory name in commercial usage was "allowance".

For fear of being misunderstood, we state here, that we are not arguing that the name determines

the character of the thing. As has been repeatedly said, the Courts regard things, not names. But we are arguing that the name adopted for the thing shows the intent, or idea, which that word was intended to cover.

These Allowances were not paid because the spirits were exported. They were paid for quite a different reason.

The law left it open for the distiller to decide whether he would export, warehouse, sell, or use spirits under conditions *which resulted* in an Allowance, or whether he would export, warehouse, sell, or use them under conditions *which did not result* in an Allowance.

It seems clear to us that the motive which influenced him to do the former was not the expectation of an Allowance, but patriotism. The Allowance did not make up the money lost.

In the foregoing analysis we have spoken of three different kinds of warehouses:

A Distiller's Warehouse, an Excise Warehouse and a Crown or Customs Warehouse. To these might be added a fourth, the Distiller's Spirit Store, which is a quasi warehouse for temporary storage.

It is important to keep these in mind.

A Crown or Customs Warehouse is owned by the Government.

An Excise or General Warehouse is owned by some one, who is not a distiller, and *controlled* by the Government.

A Distiller's or private warehouse is owned by the distiller and supervised by the Government.

A Spirit Store is a temporary warehouse owned by the distiller and used for storing spirits immediately after distillation.

From each of these four warehouses spirits may be removed for export, and exported without paying duty, but no allowance is paid except on goods removed from the *Crown* or *Customs* warehouse or

the *Excise* or *General* warehouse. If the distiller sends his spirits direct to the ship or other exporting vehicle from his own Distillers' warehouse, or his own Spirit Store, there is a remission of the duty (Drawback), but no Allowance. The reason for this distinction is to be found in the fact that when a distiller exports that way, instead of first depositing his spirits in an Excise or Customs warehouse, he breaks the chain of government supervision which begins with a notice to the Government Officer that the Distiller is going to brew and should end with the final disposal of the spirits. In other words: When a distiller brews liquor and the Government Officer at the distillery begins to keep accurate account of everything, even the *water*, which goes into the vat and of *everything* which comes out of the vat, if *every gallon* which is distilled is deposited within the prescribed time, in an Excise or Customs warehouse, the Government Officer there can check off the entire production. When, however, only a *portion* of the distilled spirits, as checked up by the Officer at the distillery, goes to the Excise or Customs warehouse and the rest goes from the distiller's own warehouse or Spirit Store into consumption, use or export, the figures of the Officer at the distillery are practically the only ones available; that is, the Excise Warehouse Officer cannot check up the distillery Officer's figures.

The Law does not undertake to compel a distiller to submit his entire product to this double checking (probably for the reason above stated, that it would be regarded as an unbearable interference with individual rights), but the law does seek to persuade the distiller to submit his entire product to this double checking from motives of patriotism. To prevent this act of patriotism costing him too much money, the Government seeks to reimburse him by a carefully calculated amount called an Allowance; the "loss or hindrance" as to these

*voluntarily* submitted goods incurred by so submitting them.

The spirits which are to go into domestic potable consumption are *compelled* to be submitted to this loss and hindrance by law. That is a part of the tax; an addition to the fixed tax of 14s and 9d. But the object of the British system being only to tax liquor which is to be drunk in England, the Government seeks to avoid imposing any tax or burden upon liquor which is not to be drunk. It matters little to the Government whether the undrunk liquor remains in storage permanently; whether it is used for any of the various industrial purposes as fuels, cleansing compounds, making paints, or is methy-lated so that it becomes unfit to drink or sent out of the country. As soon as it is proven that the liquor *cannot* be used for drinking purposes, its allowance is payable.

A brief glance at the steps taken, beginning with malt or other material and ending with the spirits as drawn from the vat and checked up by the Officer at the distillery, may be of interest and make plain why the Government draws such a sharp line between the liquor which is to be drunk and the liquor which is not to be drunk.

As a concise statement of some of the restrictions imposed, we refer to the testimony of Mr. Nicholson (p. 37, T. R.), as follows:

“ We cannot work by-products as we should like to do, owing to the restrictions. We cannot work kindred trades in conjunction. For instance, we might be sugar refiners or starch makers, or other kindred trades. We are cut off entirely from that. We are put into a category by ourselves simply as distillers. These restrictions, therefore, tell very much against us. Also, whenever we apply for an alteration in plant, plans have to be produced and reasons given why we are going to do it; if the Excise do not like the scheme we cannot carry it out.

We have to satisfy them as to its chances of success. It is very hard indeed for a distiller to try experiments to improve his produce or plant. There are many things of that kind. Besides, owing to being under supervision, no secret process whatever can be worked, because the information leaks out and is passed on to other distilleries. In most free trades money is made by enterprising people working their own schemes in their own way, but we are absolutely debarred from doing so. In fact, by the rules and regulations, there is virtually only one way to make spirits—you have got to brew and use certain vessels, and you have got to distil and use certain stills, and the whole thing has got to be followed out in a certain way."

This was supplemented by James Buchanan and others as follows (same page):

"These restrictions include: *e. g.*, the condition that mashing and distilling processes must be carried on at separate times, thereby causing one-half of the plant to remain idle, whereas in Continental Distilleries these processes can be carried on simultaneously and continuously, even during Sundays. The result of this restriction is, by comparison, to reduce the production of the British distiller, employing similar plant, by one-half or two-thirds.

The regulations governing the equipment of distilleries, warehouses and housing accommodation for revenue officers are exceedingly onerous in their requirements of capital outlay."

Let us suppose a distiller is preparing to use his still—he naturally has to get his raw materials together, or within easy reach first. Before he begins to mash or brew wort from these materials, or resume brewing when a month has passed since he stopped brewing, he has to give six days' notice to the Government Officer assigned to his distillery (whose quarters he has to provide for) of the day when he means to begin to brew. This is not suffi-



cient. As the day approaches the distiller must give four hours' notice of the hour when the mashing or brewing will begin. At or before the appointed hour the Officer arrives and the mashing of materials or brewing for making wort begins as notified. The Officer stands by, the apparatus must be so running that all wort must be collected in the fermenting back within eight hours after it begins to run into the back. The Officer takes such samples as he pleases of any wort, wash, low wines, feints or spirits in any vessel or utensil that he finds in the distillery, and from his sample so taken the general character of the whole contents of the vessel or utensil as to gravity and strength is assumed, and from that assumption the duty is figured. Even the water necessary for the process of mashing or brewing is measured by reason of the fact that it all has to pass through a meter before it reaches the materials. The construction and location of every pipe, back, vat or other device employed are such that it is impossible for anything to get in or get out without the Officer's knowledge, and everything is figured by him. The process must be continuous until the distillation is complete and the distilled spirits are conveyed in bulk into the Spirits Store at the end of each distilling period. The Officer has the key to the store, and the store must be kept locked except when he chooses to unlock it. The Officer goes to the Spirits Store where the spirits must be filled into the casks in his presence. Inside of ten days all the spirits must be removed from the Spirits Store under the supervision of the Officer. They may go to the distiller's own warehouse if desired and there stored, or they may go direct to an Excise warehouse or direct to a ship about to sail for foreign parts or as ship's stores, or they may go into domestic, potable, consumption.

If they go into domestic potable consumption a duty has to be paid before the liquors leave the

Spirits Store. If the spirits go to a ship for exportation or for ship's stores they do not have to pay duty, but they get no Allowance. If the spirits, instead of either of these two things happening, are passed from the Spirits Stores to the distiller's own warehouse a duty is temporarily fixed, but not paid. The same is true of spirits which go direct from a Spirits Store to an Excise warehouse or Customs warehouse for such further steps as may be desired, such as vatting, blending, racking or reducing plain spirits by water supplied through a meter, or bottling, sweetening or coloring, and there remain until their next destination is determined.

Such of these spirits as are removed from the distiller's warehouse to an Excise or Customs warehouse remain subject to duty, but the duty is not yet paid. Such as are removed by somebody who bought them while they were in the warehouse are to be taken out for home potable consumption as soon as the duty is paid. Such spirits as are removed under proper guarantee for exportation or for use other than potable consumption do not have to pay duty, but they receive no Allowance.

Such of the spirits as are warehoused in an Excise or Customs warehouse, whether they come from the distiller's own warehouse or direct from the distiller's Spirits Store, are received subject to duty, but not yet paid. Such of them as are removed from this Excise or Customs warehouse for potable domestic consumption have to pay the duty before such removal. Such of them as are removed from this Excise or Customs warehouse, under proper security for methylation or other domestic use than potable consumption, are free from paying duty and receive the stated Allowances. Such as are removed from this Excise or Customs warehouse for exportation or ship's stores are also duty free and receive the stated Allowances. It is, therefore, evident that a sharp distinction is drawn between

the spirits which have only passed through one checking, that by the Government Officer at the Distillery, which do not get an Allowance under any circumstances, and those spirits which have gone through the second checking by the Government Officer at the Excise or Customs warehouse, which do get the stated Allowances unless they are ultimately withdrawn to be drunk in some part of Great Britain or Ireland.

The more we study this situation, the harder we find it to believe that these Allowances have anything whatever to do with the question of exportation. The question of Allowance or no Allowance lies between spirits which are put within the reach of the drinking public for the purpose of drinking, and spirits which are rendered absolutely unavailable for drinking purposes either by turning them into poisons, paints, varnishes or by methylation or by getting rid of them in some other way which is certain to keep them away from potable consumption within the United Kingdom. The fact that some of these spirits so kept from potable consumption within the United Kingdom are disposed of by sending them out of the country altogether is a mere incident. The Allowance would be paid just as quickly if the spirits were thrown *into* the Atlantic Ocean instead of taken *across* it.

As shown by the statements of the British Ambassador and several well-known distillers, printed in the record, the Allowances by no means make up for the loss and hindrance of subjecting the spirits to this second checking process with all it involves.

We, therefore, come down to this bald proposition:

In the eye of the British law there are two divisions of British spirits, plain and compound, which may be disposed of in various ways without paying the Excise tax. Those which have been singly checked get no Allowance; those which have been

doubly checked get an Allowance, but the omission to get an Allowance, or the getting of the Allowance, has nothing whatever to do with the particular way in which those singly or doubly checked spirits are disposed of.

It remains incredible to us that any one who analyzes this situation dispassionately can find any ground for thinking that the Allowances paid under this double checking system could possibly have been intended to encourage exportation; could possibly have the effect of encouraging exportation; or could possibly enable the British distiller to place his spirits here at a less price or a greater profit than he could, had no Allowance been granted to him.

A plain answer to such reasoning is that, in view of the admitted fact that the Allowance does not make up for the loss incurred in submitting his goods to the second checking by passing them through an Excise or Customs warehouse, a British exporter could sell here, at a less price or a greater profit, those spirits, which he had exported *without* sending them through one of these warehouses and on which he had received no Allowance, than those which he *had* sent through and on which he had received an Allowance.

The same thing is true of the methylator. He gets an Allowance only on spirits which have been doubly checked by going into the Excise or Customs Warehouse before methylation. Quære: Why does T. D. 34466 expressly except imported methylated spirits from the countervailing duty?

We should also note that under 52 and 53 Vict., Chap. 42 of 1889, where the compounded spirits exceed eleven degrees over proof, the Allowance may be paid immediately upon deposit in an Excise or Customs Warehouse; without waiting to see what becomes of them. Eleven degrees over proof itself constitutes an alcoholic poison. By that fact

alone the compound spirit was removed from the taxable class. But, having been voluntarily submitted to Government control in an Excise warehouse, the owner was entitled to his Allowance.

Without dwelling longer upon this point, we submit that all the evidence in this case shows that the Allowances on British spirits were in no sense a Bounty, or Grant on exportation and were in no sense a Drawback.

They were a thing apart, well-known to the law and recognized as such, as we shall expect to show further on in our own Tariff legislation, and it would be an act of injustice to penalize these Allowances as Bounties or Grants under Paragraph E of Section IV of the Tariff Act of 1913.

## POINT TWO.

**The uniform practice of the United States Supreme Court from 1791 to date, in interpreting Acts of Congress, has been to look to the intent of Congress and make that intent effective if in any way possible.**

We have tried to make an exhaustive examination of all those decisions by the Supreme Court of the United States since its organization in February term, 1790 (2 Dallas 398) to date, which deals with the interpretation of Acts of Congress.

It would, obviously, make a voluminous record if we were to set out in full the vigorous language of the successive justices who have sat upon the Supreme bench from that day to this. In calling attention, therefore, chronologically to these cases, we have

confined ourselves to a short extract, or even a few lines, from the opinion of the Court in each case. It is our desire to demonstrate to the Court that whatever the facts, whatever the peculiarities or intricacies of any case may be, the Supreme Court has always held fast to the idea that the intent of Congress controls the interpretation of the words used or omitted by Congress.

1800. The Supreme Court of the United States, 3 Howard 565, attributes the following language to one of its own prior decisions cited as 4 Dall. 14: "The intention of the Legislature, when discovered, must prevail, any rule of construction declared by previous acts to the contrary notwithstanding." We have been unable to find this remark in *Cooper v. Telfair*, as reported 4 Dall. 14.

1804. *Adams v. Woods*, 2 Cranch, 6 U. S. 336. It is true that general expressions may be restrained by subsequent particular words, which show that in the intention of the legislature, those general expressions are used in a particular sense."

1806. *U. S. v. Heth*, 3 Cranch 399, 409: "The words of the act, 'Arising on goods imported,' although in themselves very indefinite in point of time, will receive a precise signification in this respect, by supplying the words 'Heretofore,' to give them a past, or 'hereafter,' to give them a future signification."

1824. *The Appollon*, 9 Wheaton 362. "It cannot be presumed that Congress would voluntarily justify such a clear violation of the laws of nations."

1824. *The Emily and the Caroline*, 9 Wheaton 381. "In construing a statute, penal as well as others, we must look to the object in view, and never

adopt an interpretation that will defeat its own purpose, if it will admit any other reasonable construction."

1824. *The Merino, etc.*, 9 Wheaton 391. "Be this as it may, the language of the acts of 1800 and 1818, leaves no reasonable doubt that the intention of the legislature was \* \* \*."

1824. *The Margaret*, 9 Wheaton 421, "and, therefore, it may have escaped the attention of Congress, that such was the legal construction. But such a supposition is not lightly to be indulged, not only from the direct and unequivocal language of the judiciary act of 1789, but also from the reference in the registry act to the revenue act of 1790."

1826. *U. S. v. Vanzandt*, 11 Wheaton 184. "It may further be remarked, that if it had been the policy and intent of the legislature, that the act of delinquency should be inexorably followed by a removal from the office, it might not be unreasonable to presume that such a consequence would have been distinctly announced."

1827. *U. S. v. 350 Chests of Tea*, 12 Wheaton 486, 493. "If that were the intention of the legislature, the offense would consist."

1828. *Minor et al. v. The Mechanics' Bank of Alexandria*, 1 Peters 46. "But no general rule can be laid down upon this subject, further than that that exposition ought to be adopted in this as in other cases, which carries into effect the true intent and object of the Legislature in the enactment."

1828. *Jackson v. Clark et al.*, 1 Peters 628, 635. "This reasonable, and, we think, necessary construction, has met with general acquiescence. Con-

gress has acted upon it and has acted in such a manner as not to excite complaints, either in the State of Virginia or the holders of military warrants."

1829. *Pennock and Sellers v. Dialogue*, 2 Peters 1, 18. "In such a case, if the court could perceive no reason for the restrictions, the will of the Legislature must still be obeyed."

1829. *Wilkinson v. Leland et al.*, 2 Peters 627, 662. "The only question then, is what is the intent of the Legislature in the act of 1792?"

1840. *The Lessee of Brewer v. Blougher et al.*, 14 Peters 178, 198. "It is undoubtedly the duty of the court to ascertain the meaning of the Legislature, from the words used in the statute, and the subject-matter to which it relates; and to restrain its operation within narrower limits than its words import, if the court are satisfied that the literal meaning of its language would extend to cases which the Legislature never designed to embrace in it."

1840. *The Lessee of Pollard's Heirs v. Kibbe*, 14 Peters 353, 361. "The term 'new' in its ordinary acceptation, when applied to the same subject or object, is the opposite of old. But such cannot be its meaning as here used; for there is no pretense that two grants and orders of survey had at any time been used for the same lot. Some other meaning must, therefore, be given to it."

1840. *U. S. v. Morris*, 13 Peters 464, 475. "Yet the evident intention of the Legislature ought not to be defeated by a forced and overstrict construction."

1841. *Minis v. The United States*, 15 Peters 434, 445: "Nor ought such an intention on the part of



the Legislature to be presumed, unless it is expressed in the most clear and positive terms, and where the language admits of no other reasonable interpretation."

1845. *Aldridge et al. v. Williams*, 3 Howard 9, 24. "The law as it passed is the will of the majority of both houses, and the only mode in which that will is spoken is in the act itself; and we must gather their intention from the language there used, comparing it, when any ambiguity exists, with the laws upon the same subject, and looking, if necessary, to the public history of the times in which it was passed."

1845. *The United States v. Freeman*, 3 Howard 556, 565. "Wherever any words of a statute are doubtful or obscure, the intention of the Legislature is to be resorted to, in order to find the meaning of the words. (*Wimbish v. Tailbois*, Plowd. 57). A thing which is within the intention of the makers of the statute, is as much within the statute, as if it were within the letter."

1862. *U. S. v. Babbit et al.*, 66 U. S. 55. "What is implied in a statute, pleading, contract, or will, is as much a part of it as what is expressed."

1886. *U. S. v. The Reform*, 70 U. S. 617. "Presumption is that Congress did not intend to relax the existing restrictions upon commercial intercourse with the States or districts declared to be in insurrection, because there is not a word or phrase in the Act indicating any such intention. Condition of affairs was well known to Congress at that period, and it is to be presumed that those who voted for the Appropriation Act and directed the purchase of the cotton seed, if they had intended to relax the commercial restrictions as a means of

facilitating the purchase, would have employed appropriate language to signify that intention. Nothing of the kind is expressed in the Appropriation Act."

1867. *Supervisors, Rock Island Co. v. U. S.*, 71 U. S. 435. "In all such cases it is held that the intent of the Legislature, which is the test, was not to devolve a mere discretion, but to impose 'a positive and absolute duty.'"

1867. *Hadden v. Barney*, 72 U. S. 107. "It is true that some of the other sections, when providing for a duty upon articles previously exempt, express the intention of the Legislature in this respect in language free from doubt."

1868. *Poor's Lessees v. Considine*, 73 U. S. 458. "It only requires the reading of the 5th section of the statute before the 4th in order to effectuate the intention of the Legislature."

1872. *Reiche v. Smythe*, 80 U. S. 162. "If it be true that it is the duty of the court to ascertain the meaning of the Legislature from the words used in the statute and the subject-matter to which it relates, there is an equal duty to restrict the meaning of general words, whenever it is found necessary to do so, in order to carry out the legislative intention. *Brewer v. Blougher*, 14 Pet. 178. And it is fair to presume, in case a special meaning was attached to certain words in a prior tariff Act, that Congress intended they should have the same signification when used in a subsequent Act in relation to the same subject matter."

1873. *The State v. Stoll*, 84 U. S. 425. "Is it clear and certain that the Act of 1843 was intended to prescribe the only rule?"

1873. *Atkins v. Fiber Disintegrating Co.*, 85 U. S. 272. "The intention of the Law maker constitutes the Law. A thing may be within the letter of a statute and not within its meaning, or within its meaning though not within its letter."

1874. *Blake v. National Bank*, 90 U. S. 307. "Under these circumstances we are compelled to ascertain the legislative intention by a recurrence to the mode in which the embarrassing words were introduced, as shown by the journals and records, and by giving such construction to the statute as we believe will carry out the intentions of Congress."

1874. *Smythe v. Fiske*, 90 U. S. 374. "Revenue Laws are to be construed liberally to carry out the purposes of their enactment."

1876. *U. S. v. Reese*, 92 U. S. 214. "This is a penal statute and must be construed strictly; not so strictly, indeed, as to defeat the clear intention of Congress, but the words employed must be understood in the sense they were obviously used. *U. S. v. Wiltberger*, 5 Wheaton 85. If, taking the whole statute together, it is apparent that it was not the intention of Congress thus to limit the operation of the Act, we cannot give it that effect."

1876. *Henderson v. Mayor*, 92 U. S. 259, 268. "In whatever language a statute may be framed, its purpose must be determined by its natural and reasonable effect; and if it is apparent that the object of this statute, as judged by that criterion, is."

1877. *Hydenfeldt v. Daney Gold and Silver Mining Co.*, 93 U. S. 634. "It is true that there are words of present grant in this law; but in construing it, we are not to look at a single phrase in it, but to its whole scope, in order to arrive at the intention of the makers of it."

1878. *Neal v. Scruggs*, 95 U. S. 704. "Such construction of the statute is consonant with equity, and consistent with the object and intention of Congress."

1878. *U. S. v. Moore*, 95 U. S. 760. "Such a result could not have been intended by Congress."

1878. *Kohlsaat v. Murphy*, 96 U. S. 153. "In the exposition of statutes, the established rule is that the intention of the lawmaker is to be deduced from a view of the whole statute, and every material part of the same."

1879. *The Abbotsford v. Johnson*, 98 U. S. 440. "Having that meaning, therefore, it is to be presumed they were used in that sense in this instance, unless the contrary is in some way made to appear."

1879. *Platt v. Union Pacific R. R.*, 99 U. S. 48. "All will concede that in construing the Act of 1862 we are to look at the state of things then existing and, in the light then appearing, seek for the purpose and objects of Congress in using the language they did. And we are to give such construction to that language, if possible, as will carry out the congressional intentions."

1879. *Newton v. Commissioners*, 100 U. S. 548. "There must have been a deliberate intention clearly manifested on the part of the State to grant what is claimed. Such a purpose cannot be inferred from equivocal language."

1879. *Washington Market Co. v. Hoffman*, 101 U. S. 112. "It was said to be the undoubted duty of the court to ascertain the meaning of the Legislature from words used in the statute and the subject

matter to which it relates and to restrain its operation within narrower limits than its words import, if the court is satisfied that the literal meaning of its language would extend to cases which the Legislature never designed to include in it."

1881. *Wilson Co. v. Third National Bank*, 103 U. S. 770. "What is implied in a statute is as much a part of it as what is expressed."

1883. *U. S. v. Forty-three Gallons of Whisky*, 108 U. S. 491. "It would require very clear expressions in any general legislation to authorize the inference that Congress purposed to depart from its long established policy in regard to a matter of such vital importance to the peace and to the material and moral well being of these wards of the Nation."

1883. *Claffin v. Com. Ins. Co.*, 110 U. S. 81. "We are bound to take the words of the law in their usual ordinary and literal meaning, and to construe the two provisions in the different sections in the same sense which, in previous statutes, had uniformly been given to them and not invent a new application and relation of the two clauses without any indication whatever of any intention on the part of Congress to that effect."

1885. *Thornley v. U. S.*, 113 U. S. 310. "We are not called on to explain why Congress should apply one rule to the officers of the army and another to the officers of the navy. It is sufficient to say that it has clearly done so."

1887. *U. S. v. Johnston*, 124 U. S. 236. "It is impossible to suppose that Congress intended "

1887. *U. S. v. Mouat*, 124 U. S. 303. "it will be the duty of the court in construing such an Act of

Congress to ascertain its true meaning and be governed accordingly."

1887. *U. S. v. Hendee*, 124 U. S. 309. "We are of opinion that the word "officer" is used in that statute in the more general sense which would include a paymaster's clerk; that this was the intention of Congress is its enactment."

1887. *Hannibal, etc., v. Missouri River, etc.*, 125 U. S. 260. "We concur with the court below that we must look to the spirit and reason of this provision of the law, and construe it with reference to its evident purpose."

1889. *Lake County v. Rollins*, 130 U. S. 662. "So, also, where a law is expressed in plain and unambiguous terms, whether those terms are general or limited, the Legislature should be intended to mean what they have plainly expressed, and consequently no room is left for construction."

1889. *Yazoo, etc., v. Thomas*, 132 U. S. 174. "the necessity of resorting to it to assist in ascertaining the true intent and meaning of the Legislature."

1889. *Vane v. Newcombe*, 132 U. S. 220. "may be referred to in order to discern the intent of the Legislature."

1889. *United States v. Lacher*, 134 U. S. 624. "For the purpose of arriving at the true meaning of a statute, courts read with such stops as are manifestly required."

1892. *Church of the Holy Trinity v. U. S.*, 143 U. S. 457. "Among other things which may be considered in determining the intent of the Legislature is the title of the Act."

1892. *Law Ow Bew v. U. S.*, 144 U. S. 47. "Nothing is better settled than that statutes should receive a sensible construction, such as will effectuate the legislative intention, and, if possible, so as to avoid an unjust or an absurd conclusion."

1897. *In re Chapman*, 166 U. S. 661. "nothing is better settled than that statutes should receive a sensible construction, such as will effectuate the legislative intention, and, if possible, so as to avoid an unjust or an absurd conclusion."

1897. *U. S. v. Goldenberg*, 168 U. S. 95. "The primary and general rule of statutory construction is that the intent of the Law maker is to be found in the language that he has used. He is presumed to know the meaning of the words, and the rules of grammar. The courts have no function of legislation and simply seek to ascertain the will of the legislator."

1899. *Chew Hing Lung v. Wise*, 176 U. S. 156. "The omission of root flour from the free list, therefore, had no effect on tapioca flour, and if there had been an intention to include it in the dutiable list, especially after these repeated decisions of the Treasury that it was entitled to free admission as tapioca, we cannot but believe that Congress would have expressed that intention with reasonable clearness."

1901. *Rodgers v. U. S.*, 185 U. S. 83. "The primary rule of statutory construction is, of course, to give effect to the intention of the legislature."

1901. *Chesapeake, etc., v. Manning*, 186 U. S. 238. "In other words did Congress intend to cover."

1902. *U. S. v. Barringer*, 188 U. S. 577. "What was intended by the Act of Congress, 1888, is moreover shown by an Act passed by the very same Congress at the same session."

1902. *Hawaii v. Mankichi*, 190 U. S. 197. "the books are full of authorities to the effect that the intention of the law making power will prevail even against the letter of the statute."

1903. *U. S. v. St. Anthony R. R.*, 192 U. S. 524. "although a liberal construction of the statute may be proper and desirable, yet the fair meaning of the language used must not be unduly stretched for the purpose of reaching any particular case which, while it might appeal to the Court, would yet pretty plainly be beyond the limitation contained in the statute."

1903. *Interstate Commerce Commission v. Baird*, 194 U. S. 25. "The object of construction, as has been often said by the Courts and writers of authority—is to ascertain the legislative intent, and, if possible, to effectuate the purpose of the law-makers."

1904. *Kepner v. U. S.*, 195 U. S. 100. "In order to determine what Congress meant in the language used in the Act under consideration \* \* \* We must look to the origin and source of the expression and the judicial construction put upon it before the enactment in question was passed. A consideration of the events preceding this regulation makes evident the intention of Congress."

1904. *Crawford v. Burke*, 195 U. S. 176. "Our own view, however, is that a change in phraseology creates a presumption of a change in intent, and that Congress would not have used such different lan-



guage in section 17 from that used in section 33 of the Act of 1876, without thereby intending a change of meaning."

1904. *U. S. v. United Verde Copper Co.*, 196 U. S. 207. "This definition of domestic gives the word an apt and sensible meaning, and we must regard the association of the word 'other' with it as designed, not as accidental."

1904. *U. S. v. Crosley*, 196 U. S. 327. "But we think this is too narrow a construction of the terms of the act, in view of its intent and purpose. For while we may not add to or take from the terms of a statute, the main purpose of construction is to give effect to the legislative intent as expressed in the act under consideration."

1906. *U. S. v. Falk*, 204 U. S. 143. "I cannot find any solid reason for believing that the Congress did not have Section 2983 in mind when it enacted said Section 20, as amended."

1907. *American Tobacco Co. v. Werckmeister*, 207 U. S. 284. "But while seeking to gain the legislative intent primarily from the language used, we must remember the objects and purposes sought to be attained."

1909. *Pickett v. U. S.*, 216 U. S. 456. "The reason of the law, as indicated by its general terms, should prevail over its letter, when the plain purpose of the Act will be defeated by strict adherence to its verbiage."

1910. *Louisville & Nashville R. R. v. Mottley*, 219 U. S. 467. "Our duty is to ascertain the intention of Congress in passing the statute \* \* \* That intention is to be gathered from the words of the Act, interpreted according to their ordinary accepta-

tion, and, when it becomes necessary to do so, in the light of the circumstances as they existed when the statute was passed."

1911. *Southern Ry. Co. v. U. S.*, 222 U. S. 20. "As between the two opposing views, \* \* \* the latter is to be preferred, first, because it is in accord with the manifest purpose, shown throughout the amendatory act."

1911. *Jacobs v. Pritchman*, 223 U. S. 200. "It could not have been intended that, etc."

While we have not, of course, attempted to quote from every decision of this Court on the subject of intent, we think we have shown beyond dispute that the attitude of the Supreme Court of the United States has always been that the intent of Congress is the law and fixes the meaning of the statute.

### POINT THREE.

**Congress, by its own legislation on the subject of Allowances, Bounties, Drawbacks and Grants, from 1791 to date, has clearly indicated that paragraph E of Section IV of the Tariff Act of October 3, 1913, was not intended to include these British Allowances as subjects of countervailing duty, but was so worded as to continue the custom of fifty-three years' standing to admit British Spirits, plain or compound, without countervailing duty.**

Congress has had these four words, Allowance, Drawback, Bounty and Grant, before it for pur-

poses of tariff legislation ever since 1789. We venture to assert that any member of the Congresses which passed the Tariff Acts of 1897, 1909 and 1913, who was told that Congress did not appreciate the difference between the British Allowance on spirits, the Russian Bounty on sugar, and the Canadian camouflaged Bounty on wood pulp when Congress passed either of these three Acts, would have been surprised and, perhaps, insulted.

In view of the evident fact that various Congresses had passed tariff legislation dealing with Draw backs; dealing with Allowances; dealing with Bounties and dealing with Grants; it is, we submit, an extraordinary step which the Court below has taken in holding that Congress in using two of these four terms, intended to include one or both of the other two.

As before stated, the paragraph in dispute, paragraph E of Section IV of the Act of October 3, 1913, is not a new provision of law. It was taken bodily from section 6 of the Act of 1909, and that in turn had been taken bodily from section 5 of the Act of 1897. This double re-enactment of language brings the paragraph under two comparatively recent decisions of this Court.

In *Copper Queen Mining Co. v. Arizona Board*, 206 U. S. 474, this Court said: "And again, when for a considerable time a statute notoriously has received a construction in practice from those whose duty it is to carry it out, and afterwards is re-enacted in the same words, it may be presumed that the construction is satisfactory to the legislature, unless plainly erroneous, since otherwise, naturally the words would have been changed."

And in *U. S. v. Hermanos y Compana*, 209 U. S. 337, this Court said: "And we have decided that the re-enactment by Congress, without change of a statute, which had previously received long con-

tinued executive construction, is an adoption by Congress of such construction."

We invoke those two decisions as decisive of the present case.

No one can dispute that the Treasury Department is a part of the Executive. No one can dispute that during the period from 1897 to October 3, 1913, the Treasury Department was the Department whose duty it was to carry the statute out. Nor can any one deny that at the time of the first passage of this paragraph in 1897, countervailing duties had been imposed and collected on sugar under the Acts of 1890 and 1894, where the only word used was "Bounty".

No one can deny that between the first passage of this paragraph in 1897, its re-enactment in 1909 and its final re-enactment in 1913, the Treasury Department had imposed and collected countervailing duties on various other goods besides sugar. But the Department had never collected countervailing duties on British spirits, although the Allowances now in dispute had been continuously paid by Great Britain ever since 1860.

Especially significant is the fact that early in 1911 the Treasury Department thought of imposing a countervailing duty on British Spirits, but decided that Congress had not intended such duty to be imposed, and, therefore, refrained.

It is inconceivable that Congress did not have these things in mind when it re-enacted this paragraph of the Act of 1897 for the second time.

Several decisions by this Court seem directly in point.

The enactment of a new Tariff Act in this country is a matter long drawn out before Congress; there are hearings in committee and otherwise, investigations, reports and a great variety of details before an agreement is reached as to the language of the Act. Under these well known conditions,

why does not the question of these British Allowances come within the same category as the question of which the Court said in *U. S. v. Falk*, 204 U. S. 43, that the Court "cannot find any sound reason for believing that Congress did not have it in mind" when it re-enacted said section 20?

Or, again, why should not the absence of any change in phraseology here be as significant as the presence of change in phraseology commented upon by this Court in *Crawford v. Burke*, 195 U. S. 176. "Our own view, however, is that a change in phraseology creates a presumption of a change in intent, and that Congress would not have used such different language in section 17 from that used in section 33 of the Act of 1867, without thereby intending a change of meaning?"

Why does not the language of this Court in *Chew Hing Lung v. Wise*, 176 U. S. 156, apply? "If there had been an intention to include it in the dutiable list, especially after these repeated decisions of the Treasury that it was entitled to free admission as tapioca, we cannot but believe that Congress would have expressed that intention with reasonable clearness." Or the language of this Court in *Claffin v. Commonwealth Insurance Co.*, 110 U. S. 81: "We are bound to take the words of the law in their usual, ordinary and literal meaning, and to construe the two provisions in the different sections in the same sense which, in previous statutes, had uniformly been given to them and not invent a new application and relation of the two clauses without any indication whatever of any intention on the part of Congress to that effect?"

Why should the Government in 1914 invent a new application of section 5 of the Act of 1897 and seek to impose under the same language, in the Act of 1913, a countervailing duty which it had never imposed under the identical language of the Acts of 1897 and 1909?

Is not the present attitude of the Court of Customs Appeals in the decision complained of that which was warned against by this Court in *Platt v. Union Pacific R. R.*, 99 U. S. 48, decided in 1879, seventeen years after the passing of the Act in question? "All will concede that in construing the Act of 1862 we are to look at the state of things then existing and, in the light then appearing, seek for the purposes and objects of Congress in using the language they did. \* \* \* There is always a tendency to construe statutes in the light in which they appear when the construction is given. It is easy to be wise after we see the results of experience. We may now think it quite possible. \* \* \* But in endeavoring to ascertain what the Congress of 1862 intended, we must, as far as possible, place ourselves in the light that Congress enjoyed, look at things as they appeared to it, and discover its purpose from the language used in connection with the attending circumstances."

In construing an act of an entirely different nature, this Court, in *U. S. v. Reese*, 92 U. S. 214, lays its hand on just what the Court of Customs Appeals has attempted to do in this case, saying: "The proposed effect is not to be attained by striking out or disregarding words that are in the section, but by inserting those that are not now there."

The Court of Customs Appeals purposes to read paragraph E as if it said "Allowance, Bounty, Drawback or Grant", thus putting in the two words "Allowance" and "Drawback" when Congress has three times confined itself to the words "Bounty" and "Grant" in this special legislation, although it had used the words "Allowance" and "Drawback" in previous legislation, and had used the word "Bounty" alone in the previous sugar legislation.

This Court in *Cornell v. Coyne*, 192 U. S. 48, remarks that "to remit on articles exported, the tax

which is cast upon other like articles consumed at home, while perhaps not technically a Bounty on exportation has some of the elements thereof."

This remission of the tax is generally known as a Drawback, and this Court in the *Passavant* case, 169 U. S. 23, seems to have regarded that as a part of the market value in the home market of the country from which the goods were exported. Therefore, the Board of Appraisers, in the present case, explains the failure on the part of the Collector to countervail that Drawback as an additional duty in this case on that ground.

The Court of Appeals seems to hint that British spirits should be countervailed to the amount of the remitted Excise tax of 14s. and 9d. per gallon. It, therefore, differs from the Treasury Department as to the meaning of paragraph E.

We have here, therefore, the anomaly of letting the big remission go (for that remission of the Excise tax applies to all exportation of British spirits) and seizing upon the small Allowances (which, at most, are only paid on a technically separated class of spirits, whether exported or not).

It seems to us that the Board of General Appraisers and the Court of Customs Appeals, by the decisions complained of, have done exactly what this Court said not to do in *U. S. v. St. Anthony R. R.* 192 U. S. 524. The Court said: "The fair meaning of the language used must not be unduly stretched for the purpose of reaching any particular case which, while it might appeal to the Court, would yet pretty plainly be beyond the limitation contained in the statute."

And what the Secretary of the Treasury has undertaken to do in regard to British Spirits seems to us to be just what this Court in *U. S. v. United Verde Copper Co.*, 196 U. S. 207, said ought not to be done by the Secretary of the Interior. The Court said: "The Secretary of the Interior attempts

by it to give an authoritative and final construction of the statute. This, we think is beyond his power. \* \* \* If he can define one term, he can another. If he can abridge, he can enlarge. Such power is not regulation; it is legislation. The power of legislation was certainly not intended to be conferred upon the Secretary."

It seems to us that one statement by this Court in *Smythe v. Fiske*, 23 Wall. 374, is especially applicable to the case here: "The pre-existing law and the reason and purpose of the new enactment are also considerations of great weight."

The pre-existing law when the Tariff Act of 1897 was passed was that no countervailing duty had ever been levied on anything but sugar and that the only word to determine whether or not a countervailing duty should be imposed used in that pre-existing law was the word "Bounty". The reason and purpose of the new enactment was, obviously, to include every kind of merchandise on which a Bounty on exportation had been paid (as well as sugar), and to extend the word "Bounty" to cover such dodges and artifices as had been adopted in the case of sugar in the attempt to get away from the technical meaning of the word "Bounty" by using the somewhat different term, "Grant".

Allowances and Drawbacks were then well known, and neither of those words was put into the law of countervailing duty. Why not?

Because: the obvious reason and purpose (in a negative sense) was to permit the continuance of this custom of admitting free from countervailing duty British spirits upon which the Allowance in question had then been paid by the British Government for a period of thirty years before Congress



imposed a countervailing duty on anything. This custom had continued during the seven years of countervailing bounty-fed sugar.

This reason and purpose remained the same when Congress re-enacted the identical paragraph in 1909 and 1913, and was intended to cover the continuance of this free admission during the two periods of twelve and four years respectively, in which countervailing duties were fastened on all bounty-fed goods and all grant-fed goods, but never on British spirits to offset these Allowances.

If the Court desires citations of its own prior decisions, recognizing the propriety and frequent necessity of considering the history of the period and the environment at the time of legislation, in order to arrive at the true meaning of an Act, we invite its attention to the following cases, most of which we have already cited above:

- Standard Oil Co. *v.* U. S., 221 U. S. 1.
- Louisville & Nashville R. R. *v.* Mottley, 219 U. S. 467.
- Kepner *v.* U. S., 195 U. S. 100.
- U. S. *v.* Trans Missouri Freight Association, 166 U. S. 290.
- Smith *v.* Townsend, 148 U. S. 490.
- Church of the Holy Trinity *v.* U. S. 143 U. S. 457.
- Vane *v.* Newcombe, 132 U. S. 220.
- Platt *v.* Union Pacific R. R., 99 U. S. 48.
- Smythe *v.* Fiske, 90 U. S. 374.

And if the Court desires citations of its own prior decisions to the point that the construction of a statute made by the Department entrusted with the duty to administrate that statute is entitled to weight where any ambiguity exists, we invite the

Court's attention to the following cases, some of which we have already cited above:

In doing so, we repeat that this special point will be discussed more fully by the Counsel in the companion case, No. 310.

*Stuart v. Laird*, 1 Cranch, 299.

*Lessee of Pollards' Heirs v. Kibbe*, 14 Pet. 353.

*Swift v. U. S.*, 105 U. S. 691.

*Hahn v. U. S.*, 107 U. S. 402.

*U. S. v. Graham*, 110 U. S. 219.

*Brown v. U. S.*, 113 U. S. 568.

*Cooper Mfg. Co. v. Ferguson*, 113 U. S. 727.

*U. S. v. Philbrick*, 120 U. S. 52.

*U. S. v. Hill*, 120 U. S. 169.

*Robertson v. Downing*, 127 U. S. 607.

*German Savings Bank v. Franklin County*, 128 U. S. 526.

*Merritt v. Cameron*, 137 U. S. 542.

*St. Paul, etc., R. R. v. Phelps*, 138 U. S. 528.

*Schell v. Fauché*, 138 U. S. 562.

*Heath v. Wallace*, 138 U. S. 573.

*U. S. v. Alabama R. R.*, 142 U. S. 615.

*U. S. v. Alger*, 152 U. S. 384.

*U. S. v. Sweet*, 189 U. S. 471.

*U. S. v. Hermanos y Compana*, 209 U. S. 337.

The practice of the Treasury Department not to levy a countervailing duty under the paragraph in question on British spirits lasted from 1897 to 1914, a period of seventeen years. This contemporaneous construction was upset by T. D. 34,466 of May 25, 1914.

This upsetting of the previous practice was apparently not approved of by the Attorney General, who is quoted therein as saying that the question

"is one better fitted for Judicial determination than for an expression of his opinion."

This failure to approve is significant in view of the fact that the then Attorney General had approved T. D. 31,490 revoking 31,229 which had first imposed this C. V. D.

### **No Precedent.**

As far as we have been able to sift the matter there is no precedent whatever for imposing this C. V. D. on British Spirits.

Neither the learned and painstaking counsel for the Government, nor the Court of Customs Appeals has cited us to any case in which a C. V. D. has been imposed on British Spirits or on any other article as to which an "Allowance", such as here involved, has been bestowed.

Although the provision for countervailing against Bounties and Grants in the Acts of 1897, 1909 and 1913, is against goods of any character or country, there never seems to have been any case which has reached the Courts involving a C. V. D. except as regards Sugar.

We will not take up much time of the Court on this negative proposition. Learned Counsel in the companion case 310 will probably discuss the pertinence or lack of pertinence of the cases relied upon by the Government and the Court below. We will confine our remarks to saying that:

The Russian Sugar Bounty Case (*Downs v. U. S.*, 187 U. S. 496), the Netherlands Sugar Bounty Case (*Hills v. U. S.*, 107 Fed. 107), and the German Sugar Bounty Case (T. D. 19256, G. A. 4133) were clearly cases of Bounties on exportation, their facts being radically different from the facts here.

The two Wood Pulp cases, *Myers v. U. S.*, 140 Fed. 648, and *Heckendorn v. U. S.*, 162 Fed. 141,

arose under paragraph O (not E) as duty imposed on export of raw materials and not Bounty on exportation of finished Product.

Of these five cases only one, the Downs case, reached this Court.

There is no other case, so far as we know.

The point presented is, therefore, entirely *new*.

We respectfully submit that this question, now presented for the first time, is of sufficient importance to receive the most careful examination.

### **Molasses.**

We think we have shown, convincingly, that Congress intended not to include the Allowances on British spirits as a proper countervailing duty.

If that is so, then the intent of Congress should be regarded as the law and the Allowances should not be countervailed.

But an interesting question (perhaps academic) remains: Why did Congress wish to omit Allowances and Drawbacks from the imposition of a C. V. D.?

The answer seems to be found in our own prior tariff legislation.

In 1897 Congress seems to have resented the growing custom of other countries to give Bounties or Grants on sugar, wood pulp and other commodities, and desired to offset those Bounties or Grants by special tariff provisions.

As graphically pictured by this Court in *U. S. v. Realty Co.*, 153 U. S. 427, Congress had just been in an awkward situation with regard to sugar Bounties. In 1890 Congress, desiring to encourage the production of beet sugar in the United States, had granted a Bounty thereon. This Bounty was to protect the sugar growers against a reduction of

the high import duty on West India sugar. Perhaps it was an added protection that a C. V. D. was laid on Bounty-fed sugar, as obviously, if Cuba or other foreign countries offset the reduced import duty on sugar by giving a Bounty on export, our revenue would suffer without benefit to our own sugar producers.

Before 1897 serious doubts had been raised as to the power of Congress to bestow a Bounty on beet sugar. Clamors had been heard that the law was unconstitutional. Congress had thereupon repealed the law. Claims had come in against the Government for damages because of sugar crops planted in view of the law. Congress passed a law to reimburse planters for losses thereby.

With all this before it, Congress enacted the Tariff Act of 1897, in which Bounties and Grants were countervailed.

Congress had already legislated more or less frequently as to Drawbacks and Allowances. It took care of Drawbacks in its own way, but it kept Allowances out of the countervailing duty paragraph of the Act of 1897.

The only known Allowances, apparently, bestowed by foreign governments on articles which might be shipped to this country, were those on British spirits. For thirty-seven years (ever since 1860), as Congress well knew, Great Britain had been granting these Allowances on British spirits. Great Britain, therefore, would have been the only country immediately affected had these Allowances been countervailed. Congress was satisfied with its own treatment of the liquor question and saw no cause for annoyance or alarm in allowing British spirits to come in without a countervailing duty.

We are not to assume that distillers in this country from 1861 to 1897 were any less wide awake than the sugar growers. Nor are we to assume that

Congress would have been any less ready to impose a countervailing duty on Bounty-fed liquor and on Bounty-fed sugar.

But Congress evidently regarded these British Allowances not as a Bounty or Grant, but a perfectly legitimate thing for a Government to do.

In fact, Congress had done the same thing itself years before and (apparently), had not raised any such storm about its head for making an Allowance on distilled spirits which it had by bestowing a Bounty on beet sugar.

The policy inaugurated by Great Britain in 1860, when it established its Internal Revenue system, was only what Congress had done in 1791 when it established our first Internal Revenue system.

Section 51 of our Internal Revenue Act of March 3, 1791 (1st U. S. Stat. 210), reads as follows:

“Be it further enacted, That if any of the said spirits (whereupon any of the duties imposed by this act shall have been paid or secured to be paid) shall, after the last day of June next, be exported from the United States to any foreign port or place, there shall be an allowance to the exporter or exporters thereof, by way of a drawback, equal to the duties thereupon, according to the rates in each case by this act imposed, deducting therefrom half a cent per gallon, and adding to the *allowance* upon spirits distilled within the United States, *from molasses*, which shall be so exported, three cents per gallon, *as an equivalent for the duty laid upon molasses by the said act*, making further provision for the payment of the debts of the United States: Provided always, That the said allowance shall not be made, unless the said exporter or exporters *shall observe the regulations* hereinafter prescribed: And provided further, That nothing herein contained shall be construed to alter the provisions in the said former act, concerning drawbacks or allowances, in nature thereof, upon spirits imported prior to the first day of July next.”

Just as Congress allowed a Drawback equal to the duties imposed if the spirits were exported, so did Great Britain remit the Excise tax on British spirits exported.

Just as Congress gave an Allowance of three cents per gallon upon spirits distilled in the United States from molasses when the exporter observed the regulations which were provided in the Act of 1791, and only upon such observance, so Great Britain, in 1860, made an Allowance of 2d. per gallon when the exporter observed the regulations set forth in the Act of 1860. Could anything more clearly show that Congress made a deliberate choice as to the language of section 5 of the Act of 1897 than the facts shown? Ever since the year 1789 Congress had had four words connected with tariff legislation before it. Drawbacks had been provided for by Congress in the Act of July, 1789. Allowances had been provided for in the Act of 1791. Sugar Bounty had been countervailed by the Acts of 1890 and 1894. Neither Allowances nor Drawbacks had been countervailed. Recently certain countries had attempted to disguise Sugar Bounty by some other form of Grant. Congress was anxious to prevent this sugar Bounty from masquerading as a Grant. Congress knew that Great Britain had been granting Allowances and Drawbacks on British spirits for nearly forty years.

Had Congress intended to countervail these British Spirits because of the Allowances or Drawbacks, would it not have included whichever of those two words, Allowance or Drawback, applied to the case in the paragraph of section 5?

Well, Congress did not put the word Allowance in the paragraph, and the Treasury Department immediately began to countervail sugar and every other article of merchandise on which a Bounty or Grant had been paid or bestowed on exportation.

But the Treasury Department did not attack these British spirits. Twelve years elapsed, during all of which British spirits received their statutory Allowances and were admitted here without any countervailing duty. Congress again passed a Tariff Act with a countervailing duty paragraph and again confined that paragraph to the words Bounty and Grant.

This Court has held (*supra*) that such re-enactment without change of phraseology shows that Congress was satisfied with the way the language had been interpreted and acted upon by the Government.

Four years more passed during all of which British spirits received their statutory Allowances and were admitted here without countervailing duty, although a short lived attempt, revoked almost immediately, was made by the Treasury Department early in 1911 to construe these Allowances as a Bounty. The decision, T. D. 31490, holding these Allowances were not a Bounty seems to have met with the approval of the Attorney General of the United States.

Congress then, in October, 1913, for the third time, enacted an identical paragraph for countervailing duty which was limited to the words Bounty and Grant. This was the final word of Congress on the subject and tantamount to a recognition as correct of the construction, which, for sixteen years, had been put upon that paragraph by the English Distillers and Exporters, the American Importers and Dealers and the United States Treasury and Customs Officials.

What more could the learned Counsel for the Government in this case expect Congress to do?

Would they have Congress drop its dignified reiteration of the words Bounty and Grant and substitute the frank but somewhat school-boyish statement "British Allowances not included in the above"?



### **Conclusion.**

We respectfully submit that the intent of Congress is manifested as not including British spirits upon which the statutory Allowances have been paid, as coming under the countervailing duty clause of the Act of October 3, 1913.

That such intent so manifested is the law.

The imposing and collecting of a countervailing duty by the Treasury Department in this case was based upon the wrong construction of a statute and should be set aside.

The decision of the Court of Customs Appeals should be reversed.

Respectfully submitted,

W. P. PREBLE,

Attorney for Alex. D. Shaw & Co.

New York, April 8, 1918.

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**Countervailing Duty Cases**  
**Nos. 62 and 63.**

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IN THE  
**Supreme Court of the United States**  
OCTOBER TERM, 1918.

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No. 62.

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G. S. NICHOLAS & Co., et al.,  
Petitioners,

v.

THE UNITED STATES.

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No. 63.

---

ALEX. D. SHAW & Co., et al.,  
Petitioners,

v.

THE UNITED STATES.

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**COPY OF PORTIONS OF EXHIBITS.**

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### **COPY OF PORTIONS OF EXHIBITS.**

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For convenience of reference the principal portions of the exhibits referred to in the briefs are copied here.

**Exhibit 1(a).****Spirits Duties Act, 1860.**

ANNO VICESIMO TERTIO &amp; VICESIMO QUARTO.

Victoriae Reginae.

CHAP. CXXIX.

AN ACT to grant Excise Duties on British Spirits  
and on Spirits imported from the Channel  
Islands (28th August, 1860).

\* \* \* \* \*

## ALLOWANCES.

IV. In consideration of the Loss and Hindrance caused by Excise Regulations in the Distillation and Rectification of Spirits in the United Kingdom, there shall be paid to any Distiller or Proprietor of such Spirits on the Exportation thereof from a Duty-free Warehouse, or on depositing the same in a Customs Warehouse, on or after the Fifth Day of *March*, One thousand eight Hundred and sixty, the Allowance of Twopence *per* Gallon computed at Hydrometer Proof, and to any licensed Rectifier who on or after the said last-mentioned Day has or shall have deposited in a Customs Warehouse Spirits distilled and rectified in the United Kingdom the following Allowances; (that is to say), on rectified Spirits of the Nature of *British* Compounds not exceeding Eleven Degrees over Proof as ascertained by *Sykes's* Hydrometer an Allowance of Three pence per Gallon, and on Spirits of the

Nature of Spirits of Wine an Allowance of Two-pence *per* Gallon, such Gallons being computed respectively at Hydrometer Proof.

**Exhibit 1 (b).**

28TH AND 29TH VICT., CHAPTER 98, 1865.

AN ACT to allow British Compounded Spirits to be warehoused upon drawback.

\* \* \* \* \*

SEC. 12. The allowance of 3d. per gallon granted by Section 4 of the Act passed in the 23rd and 24th years of Her Majesty's reign, Chapter 129, to any licensed rectifier in respect of rectified spirits of the nature of British Compounds not exceeding 11 degrees over proof, as ascertained by Sykes's hydrometer, shall be payable to any licensed rectifier or compounder in respect of any compounded spirits deposited under the provisions of this Act in any warehouse of customs or excise, and exported to foreign parts, or used in a customs warehouse for fortifying wines or for any other purposes to which foreign or Colonial spirits may be applied under the laws or regulations of the customs; but such allowance shall not be paid until the certificate from the proper officer of customs shall be produced to the officer of excise appointed to pay the said allowance, that such spirits have been actually exported or used as aforesaid.



**Exhibit 1(c).****Spirits Act, 1880.****CHAPTER 24.**

AN ACT to consolidate and amend the Law relating to the Manufacture and Sale of Spirits.  
(26th August 1880.)

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

**PRELIMINARY.**

1. This Act may be cited as the Spirits Act, 1880.
2. This Act shall come into operation on the first day of January one thousand eight hundred and eighty-one, which date is in this Act referred to as the commencement of this Act.
3. In this Act each of the following terms shall have the meaning assigned to it by this section, unless it is otherwise expressly provided, or there is something in the subject or context inconsistent with such meaning,—

“Spirits” means spirits of any description, and includes all liquors mixed with spirits, and all mixtures, compounds, or preparations, made with spirits:

“Low wines” means spirits of the first extraction conveyed into a low wines receiver:

"Feints" means spirits conveyed into a feints receiver:

"British spirits" means spirits liable to a duty of Excise:

"Plain spirits" means any British spirits (except low wines and feints), which have not had any flavour communicated thereto or ingredient or material mixed therewith:

"Spirits of wine" means rectified spirits of the strength of not less than forty-three degrees above proof:

"British compounds" means spirits redistilled or which have had any flavour communicated thereto, or ingredient or material mixed therewith:

"Foreign spirits" means all spirits and strong waters liable to a duty of Customs:

"Sugar" includes any saccharine substance or syrup manufactured from any material from which sugar can be manufactured:

"Commissioners" means the Commissioners of Inland Revenue:

"Methylate" means to mix spirits with some substance in such manner as to render the mixture unfit for use as a beverage, and "methylated spirits" means spirits so mixed to the satisfaction of the Commissioners:

"Proof" means the strength of proof as ascertained by Sykes's hydrometer:

"Still" includes any part of a still, and any distilling apparatus whatever for distilling or making spirits:

"Distiller," "rectifier," "dealer," and "retailer," mean respectfully a person who distills, rectifies, or compounds, deals in, or retails spirits:

"Excise trader" means any person carrying on a business subject to any of the regulations of this

Act, and includes a malster who makes malt duty-free for distillation and any proprietor or occupier of an excise warehouse:

"License" means a license granted by the Commissioners or by an officer duly authorized by them; and "licensed," as applied to an Excise trader, means a person holding a license so granted for the purpose of his business:

"Premises," when used with reference to an Excise trader, means any building or place used by him in the course of his business, and of which entry is required to be made:

"Prescribed" and "approved" mean respectively prescribed or approved by the Commissioners:

"Warehouse" means any warehouse approved or provided for the deposit of spirits:

"Distiller's warehouse" means an approved warehouse on the premises of a distiller:

"Excise warehouse" means a warehouse approved or provided by the Commissioners as a general warehouse for the deposit of spirits:

"Customs warehouse" means a warehouse approved or provided by the Commissioners of Customs for the deposit of spirits:

"Collector" means the collector of Inland Revenue, and in connection with the business of an Excise trader means the collector for the collection in which the premises of the trader are situate, and includes a person acting as such collector:

"Officer" means officer of Inland Revenue:

"Proper officer" means the officer of the division or ride in which the business of an excise trader is carried on, or in which anything is by this Act required to be done by, or any notice to be given to, such officer, and includes a person acting as

such officer, and also any officer superior in matters of Excise to such officer :

“Writing” includes print, and “written” includes printed :

“Justice” means a justice of the peace or a magistrate having jurisdiction for the county or place where any offence is committed or suspected to have been committed, or any offender is apprehended or found, or any goods or commodities are seized or liable to seizure or suspected to be so liable :

“County or place” includes a city, county of a city, county of a town, borough, liberty, division, franchise, or other place of magisterial jurisdiction :

“Schedule” means schedule of this Act.

4. This Act is divided into parts, as follows:—

Part I.—Spirits other than Methylated Spirits.

Part II.—Methylated Spiritis.

Part III.—Supplemental.

## PART I.

### SPIRITS OTHER THAN METHYLATED SPIRITS.

#### *General.*

5. (1) No person may, without being licensed to do so, or on any premises to which his licence does not extend—

(a) Have or use a still for distilling, rectifying, or compounding spirits; or

(b) Brew or make wort or wash, or distil low wines, feints, or spirits; or

(c) Rectify or compound spirits.

(2) If any person contravenes this section he shall for each offence incur a fine of five hundred pounds, and all spirits, and vessels, utensils, and materials for distilling or preparing spirits in his possession shall be forfeited.

6. Every person who makes or keeps wash prepared or fit for distillation, or low wines or feints, and has in his possession or use a still, shall, as respects the duties, penalties and forfeitures imposed by law on distillers, be deemed to be a distiller.

7. (1) In England if a distiller keeps or uses a still of which the body, without the head, is of less capacity than three thousand gallons he must not keep or use in his distillery at the same time more than two wash stills and two low wine stills.

(2) For every still kept or used in contravention of this section the distiller shall incur a fine of one hundred pounds, and a further fine of one hundred pounds for every time that any such still is used; and every still kept or used in contravention of this section shall be forfeited.

8. (1) A person shall not have a licence to keep a still of less capacity than four hundred gallons, unless he has in use a still of that capacity, or produces to the Commissioners a certificate, signed by three justices for the county or place, that he is a person of good character, and fit and proper to be licensed to keep such a still, and that the premises in which he proposes to erect the still and of which he is in actual possession, are of the yearly value of ten pounds at least.

(2) If the still is intended to be kept by persons in partnership, a certificate to the above effect with regard to one of the partners shall be sufficient.

(3) The Commissioners may, if they think fit, refuse to grant the licence, notwithstanding the production of the justices' certificate; but, in case of refusal, they shall state the grounds thereof, in writing signed by them, to the justices.

*Distiller's Premises.*

9. (1) A person shall not be entitled to a licence for, or be permitted to make entry of, a distillery, unless it is situate in or within a quarter of a mile of a market town.

(2) The Commissioners may, if they think fit, grant a licence for, and permit entry to be made of, a distillery situate beyond these limits, on the terms of the distiller providing to their satisfaction lodgings for the officers to be placed in charge of the distillery.

(3) The lodgings must be conveniently situate and must not form part of the distillery or of the distiller's dwelling-house, and the rent charged for them, unfurnished, must not exceed fifteen pounds a year.

(4) If a distiller, to whom a license is granted on these terms fails to provide the lodgings, or to keep them in repair, or interrupts or annoys any officer residing therein in his use or enjoyment thereof, the Commissioners may suspend or revoke his licence.

10. (1) No person may make entry of or use for brewing or making wort, or wash, or for distilling spirits, or for receiving or keeping spirits

as a distiller, any premises within a quarter of a mile of any premises entered or used for rectifying or compounding spirits or for receiving or keeping spirits by a rectifier.

(2) If any person contravenes this section he shall incur a fine of five hundred pounds for every week during which the premises are so entered or used.

11. (1) A distiller may not carry on upon his premises the business of a brewer of beer, or a maker of sweets, vinegar, cider, or perry, of a refiner of sugar, or of a dealer in or retailer of wine.

(2) No person may carry on the business of a distiller upon premises communicating otherwise than by an open public street or carriage road with any premises used by a brewer of beer, or a maker of sweets, vinegar, cider or perry, or a refiner of sugar, or a dealer in or retailer of spirits or a dealer in or retailer of wine.

(3) If any person contravenes any of the foregoing provisions of this section he shall incur a fine of two hundred pounds.

(4) The Commissioners may refuse to grant a licence for distilling spirits in any premises in which, from their situation with respect to premises used for rectifying or compounding spirits, or to a brewery or vinegar manufactory, they think it inexpedient to allow the distilling of spirits.

12. The Commissioners may refuse to grant a licence to brew beer, or to make vinegar, on any premises in which, from their situation with respect to a distillery, they think it inexpedient to allow the brewing of beer or making of vinegar to be carried on.

*Distiller's Spirit Store and Utensils.*

13. (1) Every distiller must, to the satisfaction of the Commissioners, provide a spirit store and cause it to be properly secured.

(2) The spirit store must be kept locked by the officer in charge of the distillery at all times except when he is in attendance.

(3) If a distiller fails to provide or secure a spirit store as by this section required, the Commissioners may, until it is so provided and secured, refuse to grant him a licence, or suspend or revoke his licence.

14. (1) Every distiller must observe the rules contained in the First Schedule.

(2) For any contravention of the rules in the First Schedule penalties shall be incurred as follows:

(a) If there is found in a distillery any vessel in excess of the number permitted by the rules in the second part of the First Schedule, the vessel, with its contents, shall be forfeited, and the distiller shall incur a fine of two hundred pounds.

(b) For any contravention of the rules contained in the third part of the First Schedule the distiller shall incur a fine of two hundred pounds, and an additional fine of twenty pounds for every day during which the contravention continues.

(c) For any contravention of the rules contained in the fourth, seventh, or eighth part of the First Schedule the distiller shall incur a fine of two hundred pounds.

(d) For any contravention of the rules contained in the fifth, sixth, or tenth part of the First



Schedule, the distiller shall incur a fine of fifty pounds.

(e) Every cask not marked as required by the rules contained in the ninth part of the First Schedule, shall, with its contents, be forfeited.

(f) For any contravention of the rules contained in the eleventh part of the First Schedule, the wash, low wines, feints, or spirits in respect of which the rules are contravened shall be forfeited, and the distiller shall incur a fine of two hundred pounds, or, at the election of the commissioners, of twenty shillings for every gallon of such wash, low wines, feints, or spirits.

15. (1) A distiller may, on giving to the proper officer two days previous notice in writing of his intention, specifying the vessel, utensil, or pipe intended to be altered, moved, or added, alter or move any entered vessel, utensil, or pipe, or add a new vessel, utensil or pipe.

(2) Every such new vessel, utensil, or pipe must be duly entered.

(3) If a distiller, without giving such notice, alters, moves, or adds to the vessels, utensils, or pipes on his premises after entry has been made thereof, or the capacity thereof has been ascertained by the proper officer, he shall for each offence incur a fine of two hundred pounds.

16. The Commissioners may permit any distiller to fix and use subject to such regulations as they prescribe, any vessel, utensil, or fitting, in addition to or instead of any of those required by this Act, and may from time to time withdraw any such permission. This Act shall apply to any such addi-

tional or substituted vessel, utensil, or fitting as if its use were permitted or required by this Act.

17. If on the premises of any distiller any attempt is made or device used to prevent or hinder an officer from ascertaining the gravity, quantity, or strength of the wort, wash, low wines, feints, or spirits in any vessel, or whilst running, or to deceive him in taking the dip or gauge of any vessel or utensil, the distiller shall for each offence incur a fine of two hundred pounds.

18. If a distiller—

(a) Places, affixes, or makes any cock, plug, pipe, or opening in, on, to, into, or from any vessel or utensil in contravention of this Act; or

(b) Causes or procures any cover, fastening, cock, plug, pump, or pipe to be so made or used that any vessel or utensil may be employed, opened, removed, filled, or emptied, in the absence of an officer, or as in any manner to avoid or defeat the security intended to be provided by this act, he shall for each offence incur a fine of five hundred pounds.

#### *Distiller's Entry.*

19. (1) Every distiller must, before he begins to brew and wort, make entry of the vessels, utensils, fittings, and places intended to be used by him, by signing and sending or delivering to the proper officer an account in the prescribed form, setting forth with the prescribed particulars—

(a) His name and abode, and the situation of the premises intended to be entered; and

(b) A true and particular description of every vessel and utensil intended to be used on those premises for the purpose of his business; and

(c) Either—

(i) The number of gallons which every still, with its head, is capable of containing; or

(ii) The number of gallons of wash per hour which every still is capable of distilling; and

(d) The purpose for which each such vessel and utensil is intended to be used; and

(e) Every house, room, and place in which any part of his business is to be carried on, or any spirits are to be kept; and

(f) The purpose for which each such house, room, or place is to be used.

(2) In the account every vessel, utensil, house, room and place must be distinguished by the name and number painted thereon.

(3) No vessel, utensil, house, room, or place must be described in the account as intended to be used for more than one purpose.

(4) There must be delivered with the account a drawing, model, or description distinctly showing the course, construction, and use of all fixed pipes to be used, and of every branch thereof and cock thereon, and every place, vessel, or utensil with which any such pipe communicates.

(5) If a distiller makes entry of any vessel, utensil, house, room, or place as intended to be used for more than one purpose, he shall for each offence incur a fine of two hundred pounds.

(6) If any vessel, utensil, fitting, house, room, or place used by a distiller, for any purpose connected with his business,—

(a) is not specified in the account required to be delivered on making entry; or

- (b) is not numbered as so specified; or
- (c) is in any other place, or used or applied for any other purpose, than as so specified; or
- (d) does not, in all respects, correspond with the representation thereof as so specified:

the distiller shall, for each offence, incur a fine of five hundred pounds, and every such vessel or utensil, with its contents, and all spirits or materials for distilling spirits found in any such place, shall be forfeited.

20. An entry must not be withdrawn whilst there remains in any place mentioned therein, any still, or in any place, vessel or utensil mentioned therein, any materials preparing or fit for distillation, or any spirits liable to duty.

#### *Materials for Distillation.*

21. A distiller may use in the brewing or making of wort or wash any material of such nature that the gravity of the wort or wash produced therefrom can be ascertained by the prescribed saccharometer.

22. (1) A distiller must not distil spirits except from wort or wash brewed or made in his distillery.

(2) If a distiller has in his possession any wort, wash, low wines, feints, or fermented liquor not brewed, made, or distilled in his distillery, he shall forfeit the same, and also incur a fine of two hundred pounds.

23. (1) A distiller must not, without the consent of the commissioners, remove any sugar from

the place entered as a sugar store, except for use in the manufacture of spirits.

(2) Not less than four hours before removing any sugar for this purpose, he must give the officer in charge of the distillery written notice, specifying the time of the intended removal, and the quantity to be removed.

(3) At the time so specified, the distiller must convey the specified sugar immediately from the sugar store to the mash tun or other entered vessel, to be there immediately used in the manufacture of spirits.

(4) He must forthwith deposit again in the sugar store all sugar so removed and not so used.

(5) If a distiller contravenes this section he shall for each offence incur a fine of fifty pounds.

#### *Brewing and Distilling.*

24. A distiller must not mash any materials, or brew, or make wort or wash, or use a still, between eleven o'clock in the afternoon of Saturday and one o'clock in the forenoon of Monday.

If a distiller contravenes this section he shall incur a fine of fifty pounds.

25. (1) The period of brewing or making wort or wash (in this Act called the brewing period), and the period of distilling spirits (in this Act called the distilling period), must, in every distillery, be alternate and distinct.

(2) The brewing period extends from the commencement of any process of wetting, brewing, or mashing any materials until all the wort or wash in the distillery has been collected in the ferment

ing backs and wash chargers, and the declaration required by this Act or such collection has been given.

(3) The distilling period extends from the commencement of the distillation of any wash until all the wash, low wines, and feints in the distillery, or in the possession of the distiller (except the feints produced by the last re-distillation), have been distilled into spirits and conveyed into the spirits receiver, and each furnace door, or the steam pipe of each still, has been secured by the officer in charge of the distillery.

(4) Except as by this Act provided, a distiller must not use any still before the expiration of two hours after the end of the brewing period.

(5) Except as by this Act provided, a distiller must not mash any materials or brew or make any wort or wash during the distilling period.

(6) A distiller may, immediately after all the wash in his possession has been removed into a wash charger, begin to brew wort, but only on condition that all the wash so removed be forthwith distilled, and that every still be worked off and secured within the following times; (that is to say), in the case of a low wines still, within thirty-two hours from the time when the wash was removed into the wash charger, and in the case of any other still within sixteen hours from that time.

(7) If a distiller contravenes this section he shall for each offence incur a fine of five hundred pounds.

26. (1) Every distiller must, at least six days before beginning to brew wort, or, if he has discontinued brewing wort for more than one month,

before recommencing to brew wort, give the proper officer a written notice, specifying the day on which he intends so to brew or recommence brewing.

(2) If a distiller contravenes this section, or if any wort or wash is found in the distillery or possession of a distiller before the notice required by this section is given, or before the day specified in the notice given by him, or if there is found in his possession any wort or wash which he may not lawfully have in his possession, he shall for each offence incur a fine of two hundred pounds, and forfeit all wort or wash so found.

27. A distiller must, at least four hours before he mashes any materials or brews for making wort, give the officer in charge of the distillery written notice specifying the day and hour when the mashing or brewing is to be commenced.

If a distiller mashes or brews without giving such notice, he shall incur a fine of fifty pounds.

28. (1) All wort must be collected into the fermenting back within eight hours after it has begun to run into the back.

(2) Immediately after the wort is so collected the distiller must deliver to the officer in charge of the distillery a written declaration specifying—

(a) The number of the back in which the wort is contained; and

(b) The gravity or (if yeast has been added) the original gravity of the wort; and

(c) The quantity thereof as measured by the number of dry inches, that is to say, by the number of inches between the dipping place of the back and the surface of the wort contained therein.

(3) If a distiller makes default in complying with the provisions of this section, or if the declaration delivered by him contains any untrue statement, he shall for each offence incur a fine of two hundred pounds.

29. If after the declaration has been delivered the gravity of the wort shall be found to exceed the gravity therein specified or the quantity of the wort or wash shall be found to exceed by five per centum the quantity of wort therein specified, the distiller shall incur a fine of two hundred pounds.

30. If after an officer has taken an account of the gravity or quantity of the wort or wash in a fermenting back any wort or wash is found in the back which exceeds in gravity, or exceeds by five per centum in quantity, the wort or wash of which the account has been taken, the following consequences shall ensue:

(a) All wort or wash found in the back shall be considered as new, and as not included in any former charge against the distiller; and

(b) The distiller shall be charged with duty in respect of the whole thereof as not being before charged; and

(c) The wort or wash of which account had previously been taken shall be deemed to be distilled or decreased, and the distiller shall be charged for a quantity of spirits in respect thereof as for wort or wash actually distilled or decreased; and

(d) The distiller shall incur a fine of two hundred pounds.

31. A distiller must not add yeast or other matter capable of causing fermentation to wort or wash in any vessel except a fermenting back.



If a distiller contravenes this section he shall incur a fine of two hundred pounds.

32. (1) A distiller may, subject as in this section mentioned, either remove yeast from the wort or wash in a fermenting back, or leave the yeast and sediment in a back, and remove the wort or wash to an empty back.

(2) The quantity of yeast removed from or the quantity of yeast and sediment left in any one back must not exceed eight per centum of the wort or wash in the back.

(3) If yeast is removed from and yeast and sediment left in the same back, the total quantity of yeast removed and yeast and sediment left must not exceed the same proportion.

(4) Four hours before removing any wort or wash the distiller must give the officer in charge of the distillery written notice specifying the backs from which and to which the wort or wash is to be removed.

(5) No wort or wash may be removed from a back until an account thereof has been taken by the officer.

(6) In calculating duty no abatement shall be made on account of any yeast removed from or yeast and sediment left in any back.

(7) A distiller may manufacture in his distillery into a solid substance any yeast removed from, or any yeast and sediment left in a back under this section, and may send out of his distillery or add to the wort or wash in any back therein, any such yeast or sediment, whether so manufactured or not.

33. (1) A distiller must, at least four hours before beginning to make bub or any other composi-

tion for promoting the fermentation of wort or wash, give the officer in charge of the distillery written notice, specifying the time when and the vessel in which the composition is to be made, the fermenting back into which it is to be put, and the quantity to be put into such back.

(2) The quantity of the composition must not exceed five per centum of the wort or wash to which it is added.

(3) The gravity of the composition must not exceed sixty degrees, and must not be increased after the officer has taken an account thereof.

(4) The whole of the composition must be conveyed into the back specified in the notice within twenty-four hours after the time therein specified for making the composition.

(5) If a distiller contravenes any provision of this section he shall, for each offence, incur a fine of two hundred pounds.

34. (1) When fermentation has ceased in a fermenting back a distiller may, during the brewing period, on giving the notice required by this Act before the removal of wash, remove the whole of the wash from the back to the wash charger, and refill the back with fresh wort.

(2) The wash so removed must be secured in the wash charger until the commencement of the distilling period.

35. (1) When the whole of the wort or wash made in a distillery during one brewing period is collected into the fermenting backs or into the fermenting backs and wash charger, the distiller must give the officer in charge of the distillery a written declaration to that effect.

(2) If the declaration is untrue in any particular, or any still in the distillery is used before the expiration of two hours after the delivery thereof, the distiller shall incur a fine of two hundred pounds.

36. If the original gravity of any wort or wash as ascertained from any sample of wash taken from a fermenting back or wash charger exceeds by more than two degrees the gravity thereof as declared by the distiller, he shall incur a fine of two hundred pounds, and a further fine of sixpence for every gallon of wash contained in the vessel from which the sample was taken.

37. (1) The gravity of wort or wash shall be ascertained by the prescribed saccharometer, and in calculating the same a degree of gravity shall be taken as equal to one thousandth part of the gravity of distilled water at sixty degrees Fahrenheit.

(2) To ascertain the original gravity of the wort from which wash is made, a definite quantity by measure of the wash must be distilled, and the distillate and spent wash each made up with distilled water to the original measure of the wash before distillation.

(3) The specific gravity of each must then be ascertained.

(4) The number of degrees and parts of a degree by which the specific gravity of the distillate is less than the specific gravity of distilled water shall be deemed the spirit indication of the distillate.

(5) The specific gravity of the spent wash added to the degree of original gravity which in Table

A. in the Second Schedule is set opposite the degree of spirit indication shall be deemed the original gravity of the wort.

(6) All weighings and measurements for any of the above purposes must be made when the liquid is at sixty degrees Fahrenheit.

(7) The distiller or any person acting on his behalf may if the distiller so desires, be present at any such process for ascertaining original gravity.

38. (1) Four hours before any wash is removed from a fermenting back, the distiller must give the officer in charge of the distillery written notice specifying the number of the back, and the day and hour of the intended removal.

(2) At the time so specified the officer shall attend, and after he has locked the discharge cock of the wash charger, and removed the fastenings which prevent the passage of the wash from the back to the charger, but not before, the whole of the wash, or, if the charger is not capable of containing the whole, then one half at least, must be removed from the back to the charger.

(3) When the wash has been so removed and the fastenings have been secured, the officer may take an account of the quantity and the gravity of the wash.

(4) After account has been so taken of the contents of a wash charger, no wash may be removed from a back into the same charger before the whole of the contents of that charger have been removed into the still or intermediate charger.

(5) The produce of all or any of the backs filled in the same brewing period may be collected in the receivers for such produce.

(6) Subject to the provisions of this section as to feints remaining from a previous distillation, all produce so collected must, throughout the whole course of its distillation, and until the removal to the spirit store of the spirits produced therefrom, be kept unmixed with any other matter, and separate from all other produce.

(7) Any feints produced by and remaining from a previous distillation may be mixed with the low wines or feints produced by a subsequent distillation, and the process of re-distilling feints may be repeated as often as the distiller thinks fit.

(8) Not less than four hours before the removal of any low wines, feints, or spirits from a receiver, the distiller must give the officer in charge of the distillery written notice specifying the day and hour of the intended removal.

(9) At the time so specified the officer shall attend, and after he has taken an account of the contents of the receiver, and removed the fastenings of its pump or discharge cock, but not before, the whole contents of the receiver must be forthwith removed therefrom, and conveyed, if low wines or feints, into the proper charger, but if spirits, into a vat or cask in the spirit store.

(10) After the fastenings have been so removed, no other low wines, feints, or spirits may be conveyed into the receiver until the whole of its contents have been removed therefrom and the fastenings again secured.

(11) If a distiller contravenes any of the foregoing provisions of this section he shall, for each offense, incur a fine of two hundred pounds.

(12) Where a distiller has secured his low wines and feints, pumps to the satisfaction of the Com-

missioners he may run low wines and feints together into the same receiver, and may at any time without notice remove low wines and feints from a receiver to a charger and re-distil them.

(13) Where a still is connected with two spirit receivers the distiller may collect in each receiver alternately the spirits produced from any distillation or re-distillation and when he has run into either receiver as much spirits as he thinks fit, he shall give notice to the officer, who shall thereupon lock the charging cock. No spirits may be removed from any such receiver until the expiration of two hours from such notice, nor except after the notice of removal required by this section.

39. At the end of every distilling period the distiller, or the principal manager of the distillery, must sign and deliver to the proper officer a return in the prescribed form specifying, with respect to the brewing and distilling period—

(a) The quantity of each description of material used in making wort or wash during the period; and,

(b) The quantity of wort or wash decreased or distilled during the period; and

(c) The quantity of spirits computed at proof produced during the period; and,

(d) The quantity of feints remaining at the end of the period.

If default is made in making the return required by this section or if the return is untrue in any particular, the distiller shall incur a fine of two hundred pounds.

40. (1) For the purpose of testing the quantity of spirits at proof in any wash by distillation, the

proper officer may require any charger or receiver in a distillery to be emptied and cleaned, and any quantity of the wash to be distilled, and the produce to be conveyed into the charger or receiver. For this purpose all persons in the employ of the distiller must, on request and on reasonable notice, provide the officer with assistance and fuel.

(2) All low wines, feints, and spirits so distilled and conveyed into a charger or receiver must be kept therein unmixed with any other thing until the officer has taken an account of the quantity and strength thereof.

(3) If a distiller contravenes any of the foregoing provisions of this section, he shall incur a fine of two hundred pounds.

(4) If the quantity of proof spirits produced from the wash exceeds the proportion of one gallon and a quarter for every hundred gallons of wash in respect of every five degrees of attenuation, that is to say, in respect of every five degrees of difference between the highest gravity of the wort from which the wash was produced as declared by the distiller or as found by the officer, and the lowest gravity of the wash as taken by the officer, the distiller shall incur a fine of two hundred pounds, and, in addition, of sixpence for every gallon of wash from which the wash so distilled was taken.

41. (1) There must not be mixed with or added to any low wines, feints, or spirits in a distillery any substance which either increases the gravity thereof, or prevents the true strength thereof from being ascertained by Sykes's hydrometer.

(2) If this section is contravened, the distiller shall, for each offense, incur a fine of two hundred

pounds, and all low wines, feints, spirits, and mixtures with respect to which the offence is committed shall be forfeited.

*Samples.*

42. (1) An officer may take a sample of any wort, wash, low wines, feints, or spirits from any vessel or utensil in a distillery, and the gravity or strength of any sample so taken shall be deemed the gravity or strength of the whole contents of the vessel or utensil from which it is taken.

(2) A distiller may, if he wishes, before any such sample is taken, stir up and mix together all the liquor contained in the vessel or utensil from which the sample is to be taken.

*Spirits in Store.*

43. (1) No spirits may be brought into a distiller's spirit store unless they have been distilled in his distillery and conveyed directly from the spirit receiver into the store.

(2) No spirits which have been removed from the store may be brought back into the store.

(3) The officer in charge of the store must, when required, attend at the store between five o'clock in the forenoon and eight o'clock in the afternoon on every day, except Sunday.

(4) All spirits in the store must be filled into casks, in the presence of the officer, in the prescribed manner.

(5) Spirits may not be removed from the store at any less strength than twenty per centum below proof, nor at any strength above twenty-five and under forty-three per centum over proof.



(6) Spirits may not be removed from the store in any quantity less than nine gallons.

(7) The casks in which spirits are removed may be either full, or, subject to the prescribed regulations, on ullage.

(8) All the spirits distilled in one distilling period (except a quantity not exceeding one hundred and fifty gallons, and in one ullage cask) must be removed from the store within ten days from the termination of that period, and before any spirits distilled in a succeeding period are brought into the store.

(9) When all the spirits distilled in one distilling period have been removed from the spirit store, or at the end of ten days from the termination of that period, whichever first happens, the proper officer shall strike a balance in the account kept by him for the distillery.

(10) If any spirits are brought into or found in or removed from a distiller's spirit store in contravention of this section the distiller shall, for each offence, incur a fine of two hundred pounds, and the spirits in respect of which the offence is committed shall be forfeited.

(11) If any spirits are found in a distiller's spirit store after the time at which they are required by this section to be removed therefrom, the distiller shall incur a fine of twenty shillings for every gallon of spirits so found.

(12) Every distiller must, to the satisfaction of the Commissioners, provide accommodation at his spirit store for the officer in charge thereof, and, in default of doing so, shall incur a fine of fifty pounds.

44. (1) The proper officer shall from time to time take an account in the prescribed manner of the quantity of spirits in a distiller's spirit store.

(2) If the quantity of spirits computed at proof found in the store is greater or less than the quantity which, according to the account so taken, ought to be therein, the distiller shall incur a fine of twenty shillings for every gallon of spirits so in excess or deficient, and the spirits (if any) in excess shall be forfeited.

(3) But a distiller shall not be liable to any penalty under this section if the excess does not exceed one half per centum, or the deficiency three per centum on the balance struck when the account was last taken, together with the quantity since brought in from the spirit receiver, nor if he satisfies the Commissioners that the deficiency does not result from fraud.

(4) Where there is an excess, and the distiller is not prosecuted in respect thereof, he shall pay duty on the excess.

45. Subject to the prescribed regulations and the prescribed security, spirits may be removed from a distiller's spirit store for exportation or for ship's stores without payment of duty.

#### *Charging and Payment of Duty.*

46. (1) The duty on spirits made in a distillery is to be charged in respect of the wort or wash, the low wines, and the feints and spirits made in the distillery, and shall be payable according to such of those modes of charge as produces the greatest amount of duty.

(2) In respect of every one hundred gallons of wort or wash the duty is to be charged for a quantity of spirits at the rate of one gallon of spirits at proof for every five degrees of attenuation, that is to say, for every five degrees of difference between the highest gravity of the wort as declared by the distiller or found by the officer (whichever is the greater) without any allowance for waste bub, dregs, yeast, or other matter, and the lowest gravity of the wash as found by the officer before distillation.

(3) In respect of low wines the duty is to be charged on the quantity of spirits at proof contained therein, less five per centum.

(4) In respect of feints and spirits the duty is to be charged on the quantity of spirits at proof after deducting the feints (if any) remaining from a previous distillation and included in the account of feints and spirits last produced.

(5) In calculating the duty payable on spirits an allowance shall be made for any deficiency occasioned by natural waste, subject to the following provisions—

(a) The allowance shall not exceed one and a half per centum on the spirits removed from the receiver to the store.

(b) If the deficiency exceeds three per centum on the spirits so removed no allowance whatever shall be made.

47. (1) The proper officer shall from time to time make out in the prescribed manner and for the prescribed period a return of the quantity of spirits for which a distiller is chargeable, and of the duty payable thereon, and shall, if required in writing by the distiller, deliver to him, or leave at

his distillery, a copy of this return signed by the officer.

(2) If a distiller does not, within the prescribed time and in the prescribed manner, pay the duty with which he is charged in the return, he shall incur a fine of twenty pounds, and forfeit double the duty payable by him.

\* \* \* \* \*

### *Warehousing.*

49. (1) A distiller may provide a warehouse on his premises for warehousing spirits distilled on the same premises without payment of duty.

(2) Every such warehouse must be approved by the Commissioners and entered by the distiller.

50. (1) The Commissioners may approve Excise warehouses for warehousing spirits without payment of duty. Such warehouses shall be for the general accommodation of persons desiring to warehouse spirits.

(2) The proprietor or occupier of an Excise warehouse must given the prescribed security.

\* \* \* \* \*

54. The Commissioners may, if they think fit, themselves provide Excise warehouses, and may charge for spirits warehoused therein warehouse rent at the prescribed rate, not exceeding one penny per week for forty gallons. This rent must be paid by the proprietor of the spirits to the collector, and shall be a lien on all spirits warehoused in the same warehouse belonging to such proprietor.

\* \* \* \* \*

56. (1) A distiller may, subject and according to the provisions of this Act and to the prescribed regulations, and the prescribed security, warehouse, without payment of duty, in the distiller's warehouse any spirits distilled on his premises.

(2) The spirits may be warehoused in casks or in vats.

(3) The spirits must not be of any strength other than that allowed on removal from the spirit store.

57. Where a distiller has given the prescribed security under which he may remove spirits from one warehouse to another, he may, subject to the provisions of this Act and to the prescribed regulations, remove any spirits directly from his store to an Excise or Customs warehouse, and all spirits so removed shall be deemed to have been first warehoused in the distiller's warehouse and removed therefrom under the provisions of this Act.

\* \* \* \* \*

59. The proprietor of any plain spirits re-imported into the United Kingdom may, on the issue by the Commissioners of Customs of a bill of store for the spirits, and on the repayment of the allowance granted on the exportation thereof, warehouse the spirits in an Excise or Customs warehouse.

\* \* \* \* \*

62. Spirits in a distiller's warehouse may, on the prescribed security being given by the distiller, be transferred to a purchaser, but no further transfer may be made of them whilst remaining in the same warehouse.

63. British spirits warehoused in an Excise warehouse in the name of a distiller or dealer may be transferred into the name of a purchaser on his producing to the officer in charge of the warehouse a written order for the delivery thereof, signed by the proprietor of the spirits, and countersigned by the proprietor or occupier of the warehouse or his servant acting for him at the warehouse. Spirits so transferred shall be discharged from all claim in respect of duties, penalties, or forfeitures to which the transferor is liable, but may not be delivered out of the warehouse for home consumption until payment of the duties chargeable thereon.

64. (1) The proprietor of spirits warehoused in a distiller's or Excise warehouse may, in accordance with the prescribed regulations, vat, blend, or rack them in the warehouse, either on payment of duty or otherwise.

(2) Every cask containing racked or blended spirits must be marked in the prescribed manner.

(3) If the proprietor of any racked or blended spirits in a warehouse fails to have the casks containing the spirits marked as by this section required, and to keep them so marked, he shall incur a fine of fifty pounds.

\* \* \* \* \*

67. (1) A distiller may, in an Excise warehouse specially approved for the purpose, and in accordance with the prescribed regulations, reduce with water any plain spirits of a strength not less than forty-three per centum over proof to any strength at which spirits may be removed from a distiller's spirit store.

(2) The water used for this purpose must be supplied only through a service pipe and meter constructed, laid down, and fixed to the satisfaction of the Commissioners.

(3) An allowance not exceeding one per centum shall be made on any deficiency occurring during the reduction.

68. (1) The proprietor of spirits warehoused in an Excise warehouse may bottle the spirits on giving the officer in charge of the warehouse twenty-four hours previous notice of his intention to do so.

(2) He must provide and give the prescribed security, and the place in which the spirits are to be bottled must be approved by the Commissioners, must be adjacent to the warehouse, and must not be situate in the same court or yard, or have any communication with the premises of a rectifier, dealer, or retailer.

(3) If the spirits are for home consumption they must be drawn off into imperial or reputed quart or pint bottles, and packed in cases containing one dozen quart bottles or two dozen pint bottles each, or any number of dozens.

(4) Each case must be fastened, secured, and marked in the prescribed manner in the bottling place.

(5) Subject as aforesaid, spirits must be bottled, packed, and removed in accordance with the prescribed regulations.

(6) If at any time there is found in the quantity of spirits belonging to the proprietor a deficiency since the last account was taken exceeding by two per centum in the quantity removed by him

into the bottling place, he shall be charged with duty on such deficiency.

(7) Spirits so bottled may not be removed for home consumption,—

(a) by a distiller, unless he is also licensed as a dealer, in a quantity less than five dozen imperial or reputed quart bottles, or ten dozen imperial or reputed pint bottles;

(b) by any person in a quantity less than one dozen imperial or reputed quart bottles, or two dozen imperial or reputed pint bottles.

69. A distiller or rectifier may, in accordance with the prescribed regulations, and on giving to the proper officer, or the authorized officer of Customs, one day's notice, add any sweetening or coloring matter, or any other ingredient, to any spirits warehoused by him in an Excise or Customs warehouse.

70. Any spirits warehoused in an Excise or Customs warehouse, except British compounds, may be used in the warehouse for fortifying wines, or for any other purpose for which foreign spirits may be used under the Acts relating to the Customs.

\* \* \* \* \*

72. Subject to the provisions of this Act, spirits warehoused may, in accordance with the prescribed regulations, and on the prescribed security being given, and at the risk of the proprietor thereof, be removed to any other warehouse except a distiller's warehouse.

73. Where spirits are to be warehoused in an Excise warehouse upon removal from another ware-



house, the proprietor of the spirits may, on their arrival at, but before their actual deposit in, the warehouse, make an entry thereof, or of some portion thereof not being less than one cask, for removal for home consumption, or to another warehouse, or for exportation, or ship's stores, and thereupon the spirits of which entry is so made shall be considered as if they had been actually deposited, and may be delivered and removed accordingly.

\* \* \* \* \*

75.(1.) Spirits may be delivered from a warehouse for home consumption after the full duty chargeable thereon has been paid.

(2.) The officer at the warehouse shall, on production to him of the receipt for the duty, allow the spirits to be removed.

(3.) The spirits must be conveyed to the place of destination and delivered there, without alteration or change, in the same casks or packages in which they left the warehouse.

\* \* \* \* \*

79. Where British spirits are delivered from a Customs warehouse for home consumption and in all cases where duty is payable on such spirits in such warehouse, the duty payable shall be collected according to the laws and regulations for like spirits in an Excise warehouse by the officers of Customs under the direction of the Commissioners of Customs and paid into the Bank of England to the account of the Receiver General of Inland Revenue and dealt with as other duties of Excise.

80. Where foreign spirits are delivered from an Excise warehouse for home consumption, the duty payable thereon shall be collected by an officer under the direction of the Commissioners according to the laws and regulations for like spirits in a Customs warehouse, and paid into the Bank of England to the account of the Commissioners of Customs and dealt with as other duties of Customs.

81. (1) The proprietor of spirits in a distiller's or Excise warehouse may, on giving notice and the prescribed bond, remove the spirits for exportation without payment of duty.

(2) The notice must be delivered to the officer in charge of the warehouse not less than twenty-four hours before the time when the proprietor intends to ship the spirits, and must specify the mark, number, and capacity of each cask or package intended to be shipped, the number of gallons and strength of the spirits contained in each such cask or package, the time and place of the intended shipment, and the name or description and destination of the ship.

(3) The officer may place any prescribed mark on each cask or package intended for exportation.

(4) The bond given by the proprietor must, subject to the prescribed regulations, be conditioned that the spirits specified in the notice given from time to time shall be conveyed to the quay where the ship is lying, shall be put on board the ship, and shall (the danger of the seas or enemies excepted) be exported to and landed at the port specified in the notice, without alteration or change, and shall not be landed at any other place.

(5) The spirits must be sent to the quay where

the ship is lying, and delivered with the permit to the custody of the authorized officer of Customs there, and must remain in his custody until shipped.

(6) On shipment the officer of Customs shall certify on the back of the permit the date of the shipment, the name of the ship, and the quantity of spirits, computed at proof, shipped, and shall send the permit to the collector of the collection from which the spirits were sent.

82. Spirits warehoused may, on the prescribed bond being given, subject to the prescribed regulations and subject to the conditions, regulations, and restrictions required by any Act in force for the time being, be delivered out without payment of duty for ship's stores.

83. Spirits warehoused may, on the prescribed bond being given, subject to the prescribed regulations, be delivered out, without payment of duty, for methylation.

\* \* \* \* \*

#### *Rectifiers.*

86. The rules contained in the fourth, sixth, seventh, eighth, ninth and tenth part of the First Schedule, with the corresponding penalties, and the provisions of this Act with respect to the following matters:

- (a) Alterations of vessels, utensils and pipes;
- (b) Powers of Commissioners to allow use of additional or substituted utensils and fittings;
- (c) Penalty for interference with and attempt to defeat gauging;

(d) Penalties for frauds and offences in relation to vessels and utensils;

(e) Making entry;

(f) Unlawful hours for distilling;

shall apply to every rectifier as if he were a distiller.

Entry must be made by a rectifier before he begins to receive, rectify, or compound any spirits.

87. (1) No person may make entry of or use for rectifying or compounding spirits, or for receiving or keeping spirits as a rectifier, any premises within a quarter of a mile of any premises entered or used for brewing or making wort or wash, or for distilling spirits, or for receiving or keeping spirits by a distiller.

(2) If any person contravenes this section he shall incur a fine of five hundred pounds for every week during which the premises are so entered or used.

88. (1) A rectifier keeping a still may not carry on upon his premises the business of a brewer of beer or a maker of sweets, vinegar, cider, or perry, or a refiner of sugar, or a dealer in or retailer of wine.

(2) No person may carry on the business of a rectifier keeping a still upon premises communicating otherwise than by an open public street or carriage road with any premises used by a brewer of beer or a maker of sweets, vinegar, cider, or perry, or a refiner of sugar, or a dealer in or retailer of spirits or a dealer in or retailer of wine.

(3) If any person contravenes any of the foregoing provisions of this section he shall incur a fine of two hundred pounds.

(4) The Commissioners may refuse to grant a licence for rectifying or compounding spirits on any premises in which from their situation with respect to a distillery they think it inexpedient to allow such business to be carried on.

89. (1) A rectifier keeping a still must not have in his possession any wort, wash, fermented liquor, or materials capable of being distilled into low wines or spirits.

(2) No rectifier whatever may—

(a) Distil or extract low wines or spirits from any material except spirits; or

(b) Have in his possession any spirits for which he has not received and delivered to the proper officer a permit or certificate; or

(c) Have in his possession any foreign spirits, except for the purpose of being rectified or compounded by him as spirits of wine or as British compounds.

(3) If a rectifier contravenes this section, he shall for each offence, in addition to any other penalty, incur a fine of five hundred pounds, or, at the election of the Commissioners, of twenty shillings for every gallon of wort, wash, fermented liquor, or other materials or of the low wines or spirits in respect of which the offence is committed.

(4) If a rectifier is convicted more than once of an offence against this section, his licence shall become void, and he shall, during three years from the date of the conviction, be incapable of holding a licence as a rectifier.

90. (1) A rectifier must, on receipt of any spirits, give notice thereof to the proper officer, and

deliver to him the permit or certificate received with the spirits.

(2) Unless the officer neglects to attend within one hour after receiving the notice, the rectifier must not, until the officer has taken account of the spirits so received, break bulk or draw off any part of the spirits or add water or anything thereto, or in any respect alter the same, or tap, open, alter, or change any cask or package containing any such spirits.

(3) If a rectifier contravenes this section he shall incur a fine of two hundred pounds and forfeit the spirits in respect of which the offence is committed.

91. (1) With respect to the business of a rectifier the rules in the Third Schedule must be observed.

(2) For any contravention of the rules in the first part of the Third Schedule the rectifier shall incur a fine of two hundred pounds.

(3) For any contravention of the rules in the second part of the Third Schedule the rectifier shall incur a fine of one hundred pounds.

(4) For any contravention of the rule in the fourth part of the Third Schedule the rectifier shall incur a fine of fifty pounds, and the spirits in respect of which the offence is committed shall be forfeited.

92. An officer may take a sample of the contents of a still of a rectifier at any time before it has begun to work, or after it has ceased working, and if there is found in the still any wine or wash put into or mixed with low wines, feints, or spirits,

the rectifier shall, in addition to any other penalty, incur a fine of five hundred pounds.

93. (1) A rectifier must not send out any spirits except British compounds or spirits of wine, and must not send out any British compounds or spirits of wine in less quantity than two gallons.

(2) If a rectifier contravenes this section, he shall, for each offence, incur a fine of fifty pounds; and all spirits sent out in contravention of this section, together with all horses, cattle, carriages, and boats made use of in conveying the same, shall be forfeited.

94. (1) An officer shall from time to time take an account in the prescribed manner of the quantity and strength of the spirits in the stock of a rectifier, making allowance for the spirits for which certificates have been granted since the last account.

(2) If a still is at work when the account is taken, all spirits produced from the charge of the still must be kept apart from the remainder of the stock until the account has been completed.

(3) If, on balancing the stock, any excess appears, a quantity of spirits, computed at proof, equal thereto shall be forfeited, and the rectifier shall incur a fine of twenty shillings for every gallon of such excess.

(4) If, on balancing the stock, there is any deficiency not duly accounted for by spirits sent out with certificate, and exceeding five per centum on the balance struck when the account was last taken, together with the quantity since lawfully received, the rectifier shall incur a fine of twenty shillings for every gallon of such deficiency.

95. (1) A rectifier may, subject to the provisions of this Act, and the prescribed regulations, warehouse in an Excise or Customs warehouse, for exportation or for ship's stores, or for home consumption. British compounds rectified or compounded by him from spirits on which duty has been paid, and not being British liqueurs or tinctures or medicinal spirits.

(2) He may so warehouse for exportation or for ship's stores, but not for home consumption, British liqueurs, tinctures, or medicinal spirits compounded by him from spirits on which duty has been paid.

(3) He may so warehouse, either for exportation or for ship's stores, but not for home consumption, spirits of wine rectified by him from spirits on which duty has been paid.

(4) British compounds warehoused for home consumption must be of a strength not exceeding eleven degrees over proof.

(5) British compounds and spirits of wine must be warehoused in casks either full or on ullage of one gallon or two gallons. All casks warehoused in any one year from the same premises must be numbered consecutively. The capacity of each cask must be not less than nine gallons, and there must be legibly cut, branded, or painted with oil colours on each end thereof—

(a) The name and place of business of the rectifier:

(b) The number of the cask and the year in which it is warehoused:

(c) The capacity of the cask in gallons, and, if the capacity is less than eighty gallons, the quarter or quarters of a gallon of capacity above the number of entire gallons:



(d) The number of gallons, strength, and denomination of the spirits contained in the casks.

(6) The rectifier must, before warehousing spirits, deliver to the officer in charge of the warehouse or the authorised officer of Customs a warehousing entry specifying—

(a) The particulars of the spirits, as set forth in the certificate:

(b) The name of the rectifier:

(c) The place whence the spirits are sent:

(d) In the case of British liqueurs, or tinctures, or medicinal spirits, the number of gallons at proof of the spirits from which the contents of each cask were compounded.

(7) The strength of all spirits warehoused on drawback (except British liqueurs, or tinctures, or medicinal spirits) shall be deemed to be that ascertained by Sykes's hydrometer.

(8) Where a cask contains British liqueurs, or tinctures, or medicinal spirits, the officer shall take a sample from the cask; and the sample shall be examined, under the direction of the Commissioners, or the Commissioners of Customs, by distillation or otherwise, and the strength as ascertained by the examination, less five degrees, shall, for the purposes of this Act, be deemed the true strength of the contents.

(9) When the officer has examined the spirits, he shall deliver to the rectifier a receipt specifying—

(a) The marks, numbers, and capacity of each cask warehoused; and

(b) The number of gallons computed at proof, description, and strength of the spirits in each cask; and

(c) The total number of gallons computed at proof received with the certificate.

(10) The officer shall forthwith send to the collector of the collection in which the rectifier's premises are situate a certificate setting forth the name of the rectifier, the situation of his premises, and the other particulars required to be inserted in the receipt.

(11) The collector shall, on receiving three days' written notice of the time when payment is required, and on production of the receipt, pay to the rectifier, or to any person authorised by him, a drawback of the duties on the spirits warehoused.

(12) Spirits warehoused for home consumption under this section may be delivered out for home consumption under the same rules and regulations and on payment of the same duty as spirits were housed by a distiller.

(13) Spirits warehoused for exportation or ship's stores under this section must not be delivered out otherwise than directly from the warehouse to the ship in which they are to be exported or used as stores.

\* \* \* \* \*

## PART II.

### METHYLATED SPIRITS.

116. Part I of this Act shall not apply to methylated spirits.

117. (1.) Methylated spirits shall, subject to the provisions of this Act, be exempt from duty.

(2). If a rectifier methylates duty-paid spirits he shall be allowed a drawback at the rate of the duty chargeable on British spirits of the like strength.

\* \* \* \* \*

123. (5) Foreign spirits may not be used for methylation until the difference between the duty of Customs chargeable thereon and the duty of Excise chargeable on British spirits has been paid.

\* \* \* \* \*

*Forms and Schedules.*

159. The Commissioners and the Commissioners of Customs respectively shall prescribe such regulations as they may from time to time think necessary for carrying into execution the provisions of this Act.

\* \* \* \* \*

**Exhibit 1(d).**

44TH AND 45TH VICT., CHAPTER 12, 1881.

\* \* \* \* \*

SEC. 16. The allowance of 3d. per gallon, payable to any licensed rectifier or compounder under Section 4 of the Act of 23d and 24th years of Her Majesty's reign, Chapter 129, or Section 12 of the Act of the 28th and 29th years of Her Majesty's reign, Chapter 98, shall be increased to 4d. per gallon.

SEC. 17. (1) Foreign wine warehoused in a customs warehouse of which an account has been taken by the proper officer of customs may upon such security being given and subject to such regulations

being observed as the commissioners of customs or the commissioner of Inland Revenue respectively shall from time to time prescribe, be removed without payment of duty to an excise warehouse and from thence to any other excise warehouse or customs warehouse or for exportation or ship's stores.

(2) Foreign wine warehoused in an excise warehouse may upon payment of the proper duties of customs be delivered for home consumption. (3) The enactments contained in the spirits Act, 1880, in relation to the proprietor or occupier of an excise warehouse and to the proprietor of spirits warehoused and to the warehousing and treatment of spirits in an excise warehouse, and the delivery of the same thereout and the collecting and accounting for the duty thereon shall have effect in relation to foreign wine warehoused in the same manner and to the same extent as if the term foreign wine was included in the term spirits wherever used in those enactments.

### **Exhibit 1(e).**

## **Customs and Inland Revenue Act, 1885.**

### **CHAPTER 51.**

**An Act to grant certain Duties of Customs and Inland Revenue, and to amend the laws relating to Customs and Inland Revenue.**

**6TH AUGUST, 1885.**

**1. This Act may be cited as the Customs and Inland Revenue Act, 1885.**

\* \* \* \* \*

## AS TO EXCISE.

3. (1) Where any spirits distilled and rectified in the United Kingdom are exported from an Excise or Customs warehouse, or are used in any such warehouse for fortifying wines, or for any other purpose to which foreign spirits may be applied, there shall be paid in respect of every gallon of such spirits, computed at hydrometer proof, the following allowances: that is to say—

In respect of plain British spirits, and spirits of the nature of spirits of wine, an allowance of twopence, and

In respect of British compounded spirits, an allowance of fourpence.

(2) The allowance shall be paid, in the case of spirits exported, to the person who shall have given security for the exportation, and in the case of spirits used in warehouse, to the person upon whose written request the spirits shall have been so used.

(3) The allowances shall not be paid until a certificate from the proper officer of Inland Revenue or Customs shall be produced to the officer of Inland Revenue appointed to pay the same, that such spirits have been actually exported or used as aforesaid.

\* \* \* \* \*

10. The enactments described in the schedule to this Act shall be and are hereby repealed to the extent in the said schedule mentioned. \* \* \* \*

\* \* \* \* \*

The Schedule  
Enactments repealed.

Sessions and Chapter * * *	Title * * *	Extent of Repeal * * *
23 & 24 Vict. c. 129.  * * *	An Act to grant excise duties on British spirits and on spirits imported from the Channel Islands.	Section four.  * * *
27 & 28 Vict. c. 12.	An Act to amend the laws relating to the warehousing of British spirits.	Section twelve.

**Exhibit 1(f).**

**Revenue Act, 1889.**

(52 & 53 VICT., CAP. 42).

CHAPTER 42.

AN ACT to amend the Law relating to the Customs and Inland Revenue, and for other purposes connected with the Public Revenue and Expenditure. (26th August, 1889).

\* \* \* \* \*

PART IV.

EXCISE.

21. Notwithstanding anything to the contrary in section three of the Customs and Inland Revenue Act, 1885, the allowances payable under that section may, in the case of British compounded spirits of a strength exceeding eleven degrees over proof, and spirits of the nature of spirits of wine, be paid, on the production of a certificate from the proper

officer of inland revenue or customs that the same have been deposited in an excise or customs warehouse, to the person in whose name they are warehoused; and any payment heretofore made on the deposit of such spirits shall be deemed to have been legally made in discharge of all claims to any allowance payable in respect thereof.

### **Exhibit 1(g).**

#### **Finance Act, 1895.**

(58 and 59 VICT. CAP. 16.)

An Act to grant certain Duties of Customs and Inland Revenue, to repeal and alter other Duties, and to amend the Law relating to Customs and Inland Revenue and to make Provision for the Financial Arrangements of the Year (30th May, 1895).

#### **PART I.**

##### **Customs and Excise.**

\* \* \* \* \*

6. Regulations of the Commissioners of Inland Revenue, under section one hundred and fifty-nine of the Spirits Act, 1880, may regulate the removal for exportation of methylated spirits, and where spirits used for methylation are removed from a place of metiylation and exported in accordance with those regulations, there shall be paid to the exporter an allowance of twopenace for every gallon of such spirits, computed at hydro-

meter proof, and subsection three of section three of the Customs and Inland Revenue Act of 1885 shall apply, as if the spirits were exported and the allowance made in pursuance of that section.

7. After the thirty-first day of December one thousand eight hundred and ninety-five, section one hundred and nineteen of the Customs Consolidation Act, 1876 (which limits the time for the payment of a drawback on the exportation of goods), shall extend to the payment of any allowance in respect of spirits exported, used, or deposited, which is payable under section three of the Customs and Inland Revenue Act, 1885, as amended by section twenty-one of the Revenue Act, 1889, and to an allowance in respect of methylated spirits exported which is payable under this Act, and to the payment of any drawback of excise which is allowed on the exportation of any goods, in like manner as if it were in terms made applicable thereto, and the date of user or deposit were the date of shipment.

8. Spirits to which any sweetening or coloring matter or any other ingredient has been added in warehouse, and spirits warehoused by a rectifier of spirits for exportation or ship's stores, and British liqueurs, may, if bottled and packed in cases when delivered from a warehouse, be removed, notwithstanding anything in sections seventy-four and ninety-five of the Spirits Act, 1880, to another warehouse for exportation or ship's stores.



**Exhibit 1 (h).****Finance Act, 1902.**

(2 EDW. 7, CAP. 7.)

AN ACT to grant certain duties of Customs and Inland Revenue, to alter other duties, and to amend the Law relating to Customs and Inland Revenue and the National Debt, and to make other provision for the financial arrangements of the year. (22nd July 1902.)

**PART I.****CUSTOMS AND EXCISE.**

1. There shall, as from the fifteenth day of April, nineteen hundred and two, be charged, levied and paid, on the grain and other articles mentioned in the First Schedule of this Act, imported into Great Britain and Ireland, the duties mentioned in that schedule, and there shall, as and from the seventh of May, nineteen hundred and two, be allowed in respect of those articles the drawbacks set out in the Second Schedule of this Act.

2. The duty of customs now payable on tea shall continue to be charged, levied, and paid until the first day of August, nineteen hundred and three, on the importation thereof into Great Britain or Ireland; that is to say—

Tea, the pound, sixpence.

3. The additional duties of customs on tobacco, beer, and spirits imposed by sections two, three, four, and five of the Finance Act, 1900 (including the increased duties imposed by section five of that Act), shall continue to be charged, levied, and paid until the first day of August, nineteen hundred and three, and as regards the period for which any additional drawbacks are allowed under those sections nineteen hundred and three shall be substituted for nineteen hundred and one.

\* \* \* \* \*

5. (1) As from the seventeenth day of June nineteen hundred and two, the Customs duty of ten shillings and fourpence on imported spirits, imposed by section seven of the Customs and Inland Revenue Act, 1881, shall as respects spirits other than rum and brandy, be ten shillings and fivepence, and the allowances of two pence and fourpence payable in respect of spirits under section three of the Customs and Inland Revenue Act, 1885, and section six of the Finance Act, 1895, shall be respectively threepence and fivepence

(2) For the purpose of section three of the Customs and Inland Revenue Act, 1885, spirits shall be deemed to be British plain spirits, or spirits in the nature of spirits of wine, and not to be British compounded spirits, unless they are proved to the satisfaction of the Commissioners of Inland Revenue to have been distinctly altered in character by re-distillation with or without the addition of flavouring matter.

\* \* \* \* \*

8. (1) Where, in the case of any art or manufacture carried on by any person in which the use

of spirits is required, it shall be proved to the satisfaction of the Commissioners of Inland Revenue that the use of methylated spirits is unsuitable or detrimental, they may, if they think fit, authorize that person to receive spirits without payment of duty for use in the art or manufacture upon giving security to their satisfaction that he will use the spirits in the art or manufacture, and for no other purpose, and the spirits so used shall be exempt from duty:

Provided that foreign spirits may not be so received or used until the difference between the duty of customs chargeable thereon and the duty of excise chargeable on British spirits has been paid.

(2) The authority shall only be granted subject to a compliance with such regulations as the Commissioners may require the applicant to observe for the security of the revenue, and upon condition that he will, to the satisfaction of the Commissioners if so required by them, render the spirits unpotable before and during use, and will from time to time pay any expenses that may be incurred in placing an officer in charge of his premises.

(3) If any person so authorized shall not comply with any regulation which he is required to observe, he shall, in addition to any other fine or liability, incur a fine of fifty pounds.

• • • • •

## Second Schedule.

## Drawbacks.

*Drawbacks to be allowed on articles exported or deposited in any bonded warehouse for use as ships' stores, or removed to the Isle of Man, if it is proved to the satisfaction of the Commissioners of Customs that the duties on importation have been duly paid.*

On any of the articles mentioned in the First Schedule which have undergone a process of manufacture or preparation in Great Britain or Ireland, a drawback equal to the duty paid on the article.

On goods in the manufacture or preparation of which in Great Britain or Ireland any of the articles mentioned in the First Schedule has been used, a drawback equal to the duty paid in respect of the quantity of that article which appears to the satisfaction of the Treasury to have been so used.

In allowing any drawback mentioned in this Schedule, the Commissioners of Customs may, with the assent of the Treasury in order to facilitate trade, relax, in the case of any goods, any requirements of sections one hundred and four and one hundred and six of the Customs Consolidated Act, 1876, as to the giving of security and the examination of goods.

**Exhibit 1(1).****Revenue Act, 1906.**

(6 EDW. 7, CH. 20.)

**CHAPTER 20.**

**AN ACT** to amend the Law relating to Customs and Inland Revenue, and for other purposes connected with Finance (4th August, 1906).

Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

**PART I.****SPIRITS.**

1. (1) Where any spirits are used by an authorized methylator for making industrial methylated spirits, or are received by any person for use in any art or manufacture under section eight of the Finance Act, 1902, the like allowance shall be paid to the authorized methylator or to the person by whom the spirits are received, as the case may be, in respect of those spirits as is payable on the exportation of plain British spirits, and the Commissioners may by regulations prescribe the time and manner of the payment of the allowance and the proof to be given that the spirits have been or are to be used as aforesaid.

(2) No allowance shall be payable under this section on methylic alcohol, but foreign methylic alcohol may be received and used under section eight of the Finance Act, 1902, without payment of the difference of duty mentioned in that section.

2. (1) Section one hundred and twenty-one of the Spirits Act, 1880 (which forbids the supply of methylated spirits except to the persons mentioned in the section), shall be construed as if, as regards the supply of industrial methylated spirits, a retailer of methylated spirits was not a person excepted under that section.

(2) A retailer of methylated spirits shall not receive or have in his possession any methylated spirits except such as may be authorised by regulations, and if any such retailer contravenes this provision, he shall, for each offence, incur a fine of fifty pounds, and the spirits in respect of which the offence is committed shall be forfeited.

(3) Every vessel in which an authorised methylator stores, keeps, or supplies industrial methylated spirits, or mineralized methylated spirits, must be labeled in such a manner as to show that the methylated spirits are industrial or mineralized as the case may be, and if an authorised methylator fails to comply with this provision, he shall, for each offence, incur a fine of fifty pounds, and the spirits with respect to which the offence is committed shall be forfeited.

(4) In addition to the account required to be kept by the proper officer under subsection (1) of section one hundred and twenty-five of the Spirits Act, 1880, an authorised methylator shall keep distinct accounts in the prescribed forms of any industrial methylated spirits and of any

mineralized methylated spirits prepared or received by him and of the sale, use, and delivery thereof, and that section shall apply with reference to each of those accounts and the spirits to which the account relates as it applies with reference to the stock account therein mentioned and to methylated spirits generally.

(5) Section one hundred and thirty of the Spirits Act, 1880, shall apply as if it were an offence under that section without the consent in writing of the Commissioners, or otherwise than in accordance with regulations, to purify or attempt to purify methylated spirits or methylic alcohol, or, after methylated spirits or methylic alcohol have once been used, to recover or attempt to recover the spirit or alcohol by distillation or condensation, or in any other manner.

(6) Subsection (2) of section one hundred and thirty of the Spirits Act, 1880, shall apply as respects any article specified in an order of the Commissioners as it applies with respect to sulphuric ether or chloroform.

3. (1) The Commissioners may permit the exportation on drawback of tinctures or of spirits of wine, subject to regulations, direct from the premises of a person licensed to rectify or compound spirits, and the like drawbacks and allowances shall be payable in respect of tinctures or spirits of wine so exported as would be payable if the tinctures or spirits of wine were exported from an excise or customs warehouse.

(2) In ascertaining the amount of drawback on any tinctures so exported, the Commissioners may make such addition as they think just in respect of waste.

(3) If any person fails to comply with any regulation made under this section, he shall, in addition to any other liability, incur in respect of each offence a fine of fifty pounds and the article in respect of which the offence is committed shall be forfeited.

(4) This section shall apply as respects the shipment of tinctures as stores as it applies with respect to the exportation of tinctures.

#### 4. (1) In this Part of this Act—

The expression “industrial methylated spirits” means any methylated spirits (other than mineralized methylated spirits) which are intended for use in any art or manufacture within the United Kingdom; and

The expression “mineralized methylated spirits” means methylated spirits which, in addition to being methylated as provided by subsection (3) of section one hundred and twenty-three of the Spirits Act of 1880, as amended by this or any other Act, have mixed with or dissolved in them such quantity of such kind of mineral naphtha as may for the time being be prescribed by regulations of the Commissioners; and

The expression “tinctures” includes medicinal spirits, flavouring essences, perfumed spirits, and any other articles containing spirits and specified in regulations of the Commissioners; and

The expression “regulations” means regulations made under section one hundred and fifty-nine of the Spirits Act, 1880.

(2) This part of this Act shall be construed with the Spirits Act, 1880.



PART II.  
CUSTOMS AND EXCISE.

5. Section two hundred and thirty-three of the Customs Consolidation Act, 1876 (which relates to the power of justices to proceed summarily in the case of certain offences against the Customs Acts and the limitations on that power), shall, as amended or affected by any other Act, apply to saccharin as it applies to spirits, with the substitution of pounds weight for gallons.

\* \* \* \* \*

8. The word "by" shall be substituted for the word "without" in subsection (2) of section five of the Finance Act, 1902 (which relates to the allowance on spirits).

**Exhibit 2.**

**Ham's Year Book, 1914.**

*Excerpt from page 61, part 1.*

**ALLOWANCES.**

The expression has more than one signification in relation to Excise matters. A. may be divided into two classes:—

1. **ALLOWANCES ON EXPORTATION**, to compensate the home trader for the cost of Excise restrictions on the manufacture. *See also* Drawback and Allowances.

*Payable* only within 2 years of shipment to the day.

*Receipts* for any allowance on goods not actually exported must be stamped in every case of £2 or upwards.

Debenture or certificate for allowance is exempt from stamp duty. Finance Act, 1907.

(a) *Industrial Meth. Spirit.*

—On dutiable spirit  
used when making;  
paid to methylator ... 3d. per proof gallon

(b) *Mineralised Meth. Spirit.*

—On dutiable spirit  
used on exportation;  
paid to methylator .. 3d. " " "

(c) *Duty Free Spirit.*—To

users at universities,  
or in arts, &c.; Revenue Act, 1906, sect. 1,  
and Finance Act, 1902,  
sect. 8 ..... 3d. " " "

(d) *British Compounds* (in-

cluding Tinctures, &c.)  
on exportation, or (ex.  
11 o. p.) on deposit in  
W. H. .... 5d. " " "

(e) *Plain British Spirits* ex-

ported, to exporter  
from W. H. .... 3d. " " "

*Excerpt from page 85, part 1.*

3.—SPIRITS.—Drawback of the duties paid is payable to rectifiers and compounders on British compounds rectified or compounded from duty paid spirits, warehoused for exportation, ships' stores, or H. C., except B. compounds exceeding

11 o. p., liqueurs, tinctures, medicinal spirits or rectified spirits of wine; similar drawback is payable on B. C. exceeding 11 o. p., liqueurs, tinctures, medicinal spirits and rectified spirits of wine when warehoused for exportation or ships' stores, and on tinctures or spirits of wine exported or shipped as stores direct from the premises of a licensed rectifier or compounder. 43 & 44 V., c. 24, s. 95 and 6 Edw. 7, c. 20, s. 3. Payment will be made on receipt of certificate of deposit or of shipment, payment limited to two years from date of shipment, deposit, or use. C. I., pars. 483 to 490.

3a.—SPIRITS ALLOWANCE.—By section 1 of the Revenue Act, 1906, an allowance of threepence per proof gallon is granted in respect of spirits (other than methylic alcohol) received by any person for use in an art or manufacture under section 8 of the Finance Act, 1902.

A similar allowance is payable also in respect of spirits received duty-free at Universities, Colleges, &c.

An allowance of threepence per gallon at proof is granted to methylators on the quantity of dutiable spirits used by them in making *industrial* methylated spirits. The allowance is payable on the number of proof gallons certified by the surveyor and the officer to have been used in the methylation.

An allowance of threepence per gallon at proof is also granted to methylators on the quantity of dutiable spirits used in making *mineralized* methylated spirits exported. The allowance is payable on the quantity of mineralized methylated spirits actually shipped, less a deduction of one tenth of the whole, and surveyors and officers must see that

this deduction is made before filling in the certificate. 2 Edw. 7, c. 7, s. 8, and 6 Edw. 7 c, 20, s. 1. G. O., 20, '06.

*Excerpt from page 165, part 1.*

**SPIRITS FOR USE DUTY-FREE AT UNIVERSITIES, COLLEGES, &c.**—2 Edw. 7, c. 7, s. 8; 6 Edw. 7, c. 20; C. I. pars. 586 to 602. G. O., 20/06.

Application for Board's authority must be made by the governing body or their representative specifying premises, number of laboratories, purpose for which spirits are to be used, and quantity required annually. Should quantity amount to 50 gallons, sureties or a guarantee society to join in a bond for proper use of the spirits must be proposed.

Only P. B. spirits or unsweetened foreign spirits of not less than 50 o. p. may be received. The differential duty must be paid on foreign spirits, other than foreign methylic alcohol; and all spirits must be used at the institutions specified.

Spirits must be received under bond either from a distillery or from an Excise or Customs warehouse, and in quantities not less than 9 bulk gallons at one time (except with special permission). Spirits will be obtainable only on presentation of a requisition signed by the proper supervisor.

On receipt of spirits the proper officer must be advised, and vessels, casks, &c., are not to be opened until he attends to take account.

Spirits must be kept under lock in a special compartment under the control of some responsible officer of the institution, and may be distributed by him undiluted to any of the laboratories on the same premises.

An allowance of 3d. per proof gallon is granted in respect of spirits, received duty-free at Universities, &c., G. O., 20/06.

*Excerpts from pages 42-44, Part 3.*

Allowances on Spirits used in making industrial methylated spirits and on spirits received for authorised use duty-free under sec. 8 of the Finance Act, 1902, are to be paid by the Collector of the collection in which the methylated spirits are made, or in which the spirits are received for authorised use, as the case may be; those on plain and compounded spirits, and on methylated mineralized spirits exported, are to be paid by the Collector of the collection from which the goods are removed, or from which they are exported, or in which the person claiming the allowance resides, as the latter may elect. Except for certificates issued under par. 254, the officer must forward to the collector of the collection in which payment is requested a duplicate (Forms 532 or 549 C., 88-1, 89-1, or 89-3 E.) of the certificate (532a or 549C., and 88, 89, or 89-2 E.) given to the claimant. The allowances on spirits of wine and B. Compounded Spirits exc. 11 o. p. must be paid on deposit only, and in no case subsequently on use or exportation. Those on B. liqueurs, including Medicinal Spirits and Tinctures in casks are to be paid only on exportation, and on the quantity calculated in accordance with the strength as ascertained at the Laboratory. Clements Inn Passage, W. C. G. O. 74, 1906. C., 21, 1906. E.

#### 18.—DRAWBACKS AND ALLOWANCES PAYABLE ON BRITISH SPIRITS.

The drawbacks are on spirits rectified or compounded from duty-paid spirits, and the allowances

in consideration of loss caused by the Excise Regulations. These are granted by law to distillers, rectifiers and compounders. Co. 41-2, 572-3, 575. G. O. 74, 1906 C.; 21, 1906, E.; 83, 1906, C.

(There follows a table showing the drawbacks and allowances payable on various classes of spirits, the authority therefor, etc., which does not need to be copied as the pertinent data therein also appears on pages 351-354 of the Imperial Tariff, Exhibit 4.)

Note.—By the word “exported” is also meant “shipment as stores.” Separate Certificates of Disposal should be issued for spirits exported, spirits shipped as stores, and spirits used in warehouse. On Form 532, totals only need be given. G. O. 71, 1900, C.—Ed.

*Excerpt from page 86, Part 3.*

A distiller may provide a warehouse on his own premises for warehousing spirits distilled *on the same premises*, without payment of duty.

**Exhibit 3.****Harper's Manual, 1914.**

*Excerpt from page 186.*

*Allowance.*—A payment granted for British spirits on being deposited in warehouse, used in warehouse, or exported, to compensate the distiller and rectifier for cost due to Excise Restrictions.

*British Spirits.*—Spirits liable to a duty of Excise.

*Compounded Spirits.*—Spirits prepared from duty-paid spirits by a rectifier or compounder, by re-distilling or adding any ingredient or flavouring to them.

*Plain Spirits.*—Such as are in their original state, having had no artificial flavour communicated to them

*Spirits.*—All spirits, whether British or foreign.

**Exhibit 4.****The Imperial Tariff, 1913.***Excerpt from pages 12-22.*

A TABLE OF THE  
DUTIES OF CUSTOMS  
payable on the following goods,  
ON THEIR IMPORTATION INTO GREAT  
BRITAIN AND IRELAND,  
Under 39 & 40 Vict., cap. 35, and subsequent Acts.

	Imported in Casks. £. s. d.	Imported in Bottles. £. s. d.
<b>SPIRITS AND STRONG WATERS:</b>		
For every gallon computed at hydrometer proof of Spirits of any description (except Perfumed Spirits), including Naphtha or Methyllic Alcohol purified so as to be potable, and mixtures and preparations containing spirits—		
<b>Enumerated Spirits—</b>		
Brandy .....per proof gallon	0 15 1	0 16 1
Rum ..... " " "	0 15 1	0 16 1
Imitation Rum ..... " " "	0 15 2	0 16 2
Geneva ..... " " "	0 15 2	0 16 2
Additional in respect of sugar used in sweetening any of the above tested for strength, if sweetened to such an extent that the spirit thereby ceases to be an enumerated spirit—		
per proof gallon .....	0 0 1	0 0 1
<b>Liqueurs, cordials, mixtures, and other preparations containing spirits, not sweetened, provided such spirits are not shown to be unenumerated; if tested, the proof gallon..</b>		
	0 15 2	0 16 2
<b>Unenumerated Spirits—</b>		
Sweetened ..... per proof gallon (Including Liqueurs, Cordials, Mixtures and other preparations containing Spirits; if tested.)	0 15 3	0 16 3
Not sweetened ..... per proof gallon (Including Liqueurs, Cordials, Mixtures and other preparations containing Spirits, provided such Spirits can be shown to be both Unenumerated and Not sweetened; if tested.)	0 15 2	0 15 2
<b>Liqueurs, Cordials, Mixtures and other preparations containing Spirits, in bottle, entered in such a manner as to indicate that the strength is not to be tested.....</b>		
per liquid gallon .....	—	1 1 6
Perfumed spirits .....	1 4 1	1 5 1



The surtax is to be imposed upon wines or spirits imported in bottles of any size, or any other vessel (including kegs) of a capacity not exceeding two gallons.

Upon payment of the difference between the duties on Foreign and British Spirits, Foreign Spirits may be delivered under certain conditions for methylation, or for use in art or manufacture, but foreign methylic alcohol may be used in art or manufacture without the payment of this differential duty.

5. An obscured spirit is a spirit of which the specific gravity, corresponding to the relative amounts of the alcohol and water it contains, is affected by the presence of some substance in solution, and may be either Sweetened or Unsweetened Spirits. In the case, however, of such liquors as Absinthe or Kirschwasser, which are those as to which questions are most likely to arise, sweetening, within the above definition, may or may not have been added, and the fact can only be ascertained in each case by testing.

\* \* \* \* \*

£. s. d.

—Additional on Foreign Spirits bottled in Bond for H. C. (43 Vict. c. 14.) (the dozen quarts or two dozen pints) 0 0 3

\* \* Upon the importation into Great Britain or Ireland of any articles in the manufacture of which spirit is used, there shall be charged in respect of such quantity of spirit as shall appear to the satisfaction of the Treasury to be used in the manufacture of such articles, a duty equivalent to that which would be chargeable on the like quantity of spirit on its importation into the United Kingdom.

*Excerpt from page 33.*

# INLAND REVENUE DUTIES

• • • • •			
SPIRITS, home made, Gin, Whisky, &c.		f s. d.	
• • • • •	per proof gallon	0 14	9

*Excerpt from page 105.*

For Form of Stores authority, see G. O. No. 6, 1887. By this, the master or owner may authorize the shipment of such stores under the bond given by the store-dealer, and in case of British spirits so shipped, the bond given by the store-dealer is to be considered as the security upon which such spirits have been exported, and the allowances will then be payable to the giver of such bond, instead of to the master or owner of the vessel.—G. O. No. 6, 1887.

*Excerpt from page 349.*

2. 44 Vict. c. 12. s. 18.—The enactments in relation to goods liable to Customs duties in Customs warehouses have effect in relation to such goods in Excise warehouses; and those relating to goods liable to Excise duty in Excise warehouses have effect in relation to such goods in Customs warehouses.

*Excerpt from pages 351-354.*

## 8. DRAWBACKS AND ALLOWANCES.

Acts.	Description of Goods.	Rate.	
		Quantity.	Draw-back &c.
• • •	<b>DRAWBACKS.</b>	• • •	• • •
43 & 44 Vict. c. 24	BRITISH SPIRITS.—On unsweetened British compounds at their strength as ascertained by Sike's hydrometer.	Proof gall.	£ s. d. 0 14 9
63 Vict. c. 7		" "	0 14 9
1 Edw. 7 c. 7	On British liqueurs, including all sweetened or otherwise "obscured" British compounds, tinctures or medicinal spirits, essences, and perfumed spirits, on the strength as ascertained on examination by distillation, or otherwise.	" "	0 14 9
	On spirits of wine rectified from duty-paid spirit.	" "	0 14 9
1 Edw. 7. c. 7.	On the duty-paid refined sugar contained in sweetened British compounds exported or shipped as stores.	the cwt.	0 1 10
	<b>ALLOWANCES.</b>		
48 & 49 Vict. c. 51	On British, plain spirits, exported, shipped as stores, or used in warehouse for fortifying wines, or for any other purpose to which foreign spirits may be applied.	Proof gall.	0 0 3
Edw. 7. c. 7.	On rectified spirits of wine, on deposit by a rectifier.	" "	0 0 3
48 & 49 Vict. c. 51	On British compounds, exceeding 11 O. P., on deposit by a rectifier.	" "	0 0 5
52 & 53 Vict. c. 42	On British compounds, not exceeding 11 O. P., on being exported, shipped as stores, or used in warehouse.	" "	0 0 5
2 Edw. 7. c. 7.	On British liqueurs, tinctures or medicinal spirits, essences, and perfumed spirits, on exportation or shipment as stores.	" "	0 0 5
48 & 49 Vict. c. 51	On mineralised methylated spirits, exported, an allowance on the quantity of dutiable spirits used in the manufacture thereof.	" "	0 0 3
2 Edw. 7. c. 7.	On British plain spirits, Foreign unsweetened spirits, and rum, or imitation rum, used for the manufacture of industrial methylated spirits.	" "	0 0 3
6 Edw. 7. c. 20	On spirits (other than methylated alcohol) received for use duty-free under section 8 of the Finance Act, 1902.	" "	0 0 3

*Excerpts from pages 355-357.*

## DEFINITIONS AND TERMS USED IN THESE REGULATIONS.

9. Board.—Either the Commissioners of Customs or Inland Revenue, according to the connection in which the word is used.

13. Warehouse.—A secure place approved by the Board, for the general service of the public, for the deposit of dutiable goods on which the duty has not been paid. The term includes general warehouse, bottling warehouse, re-packing warehouse, and vault, except when any of these are specifically named.

23. Compounded Spirits.—Spirits prepared by a rectifier or compounder by re-distilling duty paid spirits with flavouring ingredients, or adding to them any flavouring materials.

24. Liquers, and Tinctures or Medicinal Spirits.—Compounded spirits, the ingredients in which interfere with the correct action of the hydrometer. British liqueurs may be deemed to include all sweetened, or otherwise “obscured,” British compounds, including essences and perfumed spirits, of which the true strength cannot be ascertained without distillation.

(a) Industrial methylated spirits—spirits which have been methylated with at least one-nineteenth of their bulk of approved wood naphtha, and (not being mineralized methylated spirits) are intended for use in any art or manufacture within the United Kingdom.  
(See par. 425.)

(b) Mineralized methylated spirits—spirits which in addition to being methylated with at least one-ninth of their bulk of approved wood naphtha, have mixed with or dissolved in them three-eighths of one per cent, by volume approved mineral naphtha.

25. Sweetened Spirits.—The term, as applied to spirits imported in bottles, means a spirit to which any matter has been added after distillation, which imparts to it the quality of sweetness, and produces obscuration to the amount of over 6 per cent.

27.—Obscuration.—The difference, caused by matter in solution, between the true strength of spirits and that indicated by the hydrometer.

28. Vatting.—Putting together wines or spirits into a vat or large vessel to obtain uniformity of character.

29. Blending.—Putting together wines or spirits of similar sorts.

30. Mixing.—Putting together wines or spirits of different sorts.

31. Racking.—Drawing off wines or spirits from one cask or vessel into another.

32. Filling.—The making good of natural waste in casks of wines or spirits by the addition of liquor of the same or a similar kind.

41. Drawback.—A repayment of the duty upon certain goods on exportation, or on deposit in warehouse.

42. Excise Allowance.—A payment in respect of British spirits exported, deposited, or used in warehouse, to compensate distillers and rectifiers for the extra cost of manufacture due to Excise restrictions, or in respect of British or Foreign

spirits used in the manufacture of industrial methylated spirits, or received for use duty-free under section 8 of the Finance Act, 1902.

*Excerpt from page 360.*

#### FRAUDS IN WAREHOUSE.

64. It is illegal for the proprietor of goods, or a warehouse-keeper, by himself or by any person in his employment or with his connivance, to open or gain access to a warehouse except in the presence of an officer acting in the execution of his duty, or to abstract goods from any warehouse.

65. The warehouse-keeper is liable to a penalty if the goods are fraudulently concealed, or removed from a warehouse without payment of duty, or abstracted from any package, or if spirits are abstracted from the wood of empty casks while in warehouse. All such goods are forfeited, and should, when practicable, be seized.

66. The surveyor or supervisor is, without delay, to report any case of suspected fraud.

67. Surveyors, supervisors, and officers are on no account to secure the doors and leave any person in a warehouse.

*Excerpts from pages 399-400*

224. British plain spirits are first received into a general warehouse from a distillery warehouse. They are accompanied by a distillery permit, and a despatch is received by post.

225. British compounds, rectified spirits of wine, British liqueurs, and tinctures, in casks, on being

removed to a warehouse by a licensed rectifier or compounder, on drawback, are to be accompanied by an Excise certificate, written by the rectifier or compounder, and endorsed by the officer surveying the premises with, as far as applicable, the following particulars, viz. :—

Mark.

No.

Full content.

Bung.

Wet inches.

Ullage Galls.

Temp.

Strength.

Gallons at

Proof.

Description  
of Spirits.

Date.

Officer's Signature.

The officer is to forward to the warehousing station a despatch (Form No. 100-5 Excise) which must be adapted to the circumstances of the case. The rectifier must also send to the officer of the warehouse an entry or notice specifying the particulars shown in the certificate accompanying the spirits, and, when drawback is claimed on the sugar, declaring the quantity of duty-paid refined sugar per liquid gallon contained in sweetened British compounds.

226. In the case of British liqueurs (including sweetened British compounds) and tinctures, the rectifier must specify, instead of the strength as

denoted by the hydrometer, the actual number of gallons at proof from which the contents of each cask were compounded.

227. Except in the case of British compounds not exceeding 11 over proof the rectifier's certificate must be endorsed by the officer with the words "exportation or ships' stores only."

233. The first warehousing, actual or constructive, of British plain spirits liable to Excise duty is in a distiller's warehouse, and they are received into a general warehouse on a despatch.

234. The first warehousing of rectified spirits of wine, compounded spirits, liqueurs, and tinctures, in casks, is in a general warehouse from a rectifier's or compounder's stock, on a certificate, despatch, and warehousing entry or notice.

*Excerpt from page 404.*

261. Officers in charge of warehouses are to guard against the warehousing, on drawback, of British plain spirits under the designation of British compounds, and should any spirits about to be warehoused as British compounds resemble plain spirit with its character only slightly changed, samples must be forwarded to the Government Laboratory, and the Board's directions requested.

*Excerpts from pages 405 and 406.*

265. When spirits of wines in cases removed under bond are received into warehouse, it will be sufficient to open and examine one package in every ten bearing the same mark. The officer must be careful, however, to exercise an absolute discretion



as to the particular packages selected for examination, and he must select some which have not been previously examined. If in the packages opened any irregularity be discovered, or if the warehouse-keeper declines to accept the despatch quantity, every package of the consignment may be examined.

266. When the goods thus received are contained in cases fastened with tape or wire secured by a revenue seal, and are so advised in the despatch, one package only in each consignment need be opened and examined.

267. When the packages contain spirits and are found to be regular as regards the number and description of bottles therein, it will be sufficient to test the quantity and strength from one or two bottles in every 100, or less than 100, packages of a consignment, in order to ascertain whether there has been any tampering. In the case of small consignments it will not be necessary to open a bottle when the officers are satisfied that there has been no tampering.

268. When the packages contain wine none of the bottles need be opened unless fraud is suspected.

269. If any material discrepancy be discovered or any of the cases appear to have been tampered with in transit the particulars are to be reported to the Board.

270. Cases of wines or spirits which have been thus examined are not required to be examined again before delivery for home consumption, but if delivered for removal to another warehouse one or more packages must be re-examined to see that the number of bottles therein is correct. When delivered for exportation, one package in twenty,

or in any number less than twenty, need only be so examined when the officer is satisfied that the cases have not been tampered with. The contents of the bottles need not, however, be tested in any case unless there is cause to suspect fraud.

271. The surveyor or supervisor must re-examine some of the packages opened by the officer, and occasionally select, for examination by himself, one or more packages which have not been previously opened. The result should be noted in the register.

*Excerpt from pages 415-418.*

#### OPERATIONS IN WAREHOUSE.

##### *Mixing.*

321. Wines, or foreign spirits not sweetened or mixed, of different sorts, may be mixed together for exportation only. This operation may be effected under the regulations prescribed generally for vatting and blending, but the word "mixed" must be entered in the accounts, and be marked on one head of each cask containing the mixed liquids, and all marks, brands, and particulars of importation must be erased. (*See par. 210.*)

322. The proprietor's name may be marked upon casks of such mixed wines or spirits, and the officer is to note in his operations register that the packages have been so marked. The proprietor may also place on the casks his known brand or trade-mark, not being a quality mark or a mark in any way calculated to give a false character to the goods. (*See par. 210.*)

323. British plain spirits may be mixed for exportation with foreign spirits not sweetened or mixed, and the produce is to be described in the accounts as "British and foreign spirits mixed in bond," the casks being marked as directed in par. 321. But British plain spirits may not be mixed with foreign sweetened spirits, nor British compounded spirits either with foreign spirits, or with any compounded spirits of a different denomination.

324. Rum, or imitation rum, and other foreign spirits when mixed together are to be described in the accounts as "foreign spirits of various sorts mixed in bond," the casks being marked as directed in par. 321.

325. Wines from the same country or growth, but of different commercial designations (such as port, sherry, claret, hock, &c.) are, when vatted or blended, to be deemed of different sorts and to be described and marked as directed in par. 321.

326. British compounds exceeding 11 o. p., on which the allowance has been paid, may be mixed, for exportation only, with British compounds not exceeding 11 o. p., and the allowance of 5d. a gallon may be paid on the latter according to the account thereof taken immediately before the operation. When the spirits are removed the words "for exportation only" and "allowance paid" must be written in bold characters on the despatch. (*See* par. 563.) Should spirits of wine, on which the allowance has been paid on deposit, be at any time mixed with plain British spirits, the allowance payable on the exportation of the latter is to be determined as directed above but the spirits will be inadmissible for home consumption.

327. The Board's special permission is required for the mixing of foreign spirits or liqueurs, so sweetened or mixed that the strength cannot be ascertained by Sike's hydrometer, with spirits not so sweetened or mixed, such as brandy, rum, &c.

*Fining, Sweetening, Colouring, Filtering, and Reducing.*

328. The operations of fining, &c., may be performed in warehouse under the following regulations, but no unusual materials or chemical preparations for flavouring, or for altering the character of wines or spirits may be used therein.

329. Common finings such as Spanish earth, albumen, patent finings not sweetened, isinglass, milk, &c., may be added to wines not exceeding 42 degrees of strength for home consumption, in any quantity and as frequently as the merchant may deem necessary, and whether the wine be contained in original, or in vatted, blended, or racked casks. The operation is to be performed under the supervision and in the presence of the officer, who is to exercise the greatest care that the wine is not thereby reduced from a higher to a lower rate of duty, and should such a result appear probable the Board's directions must first be obtained. This transaction need not be entered in the accounts unless the rate of duty is affected.

330. Wines exceeding 42 degrees of strength can be operated upon only with the sanction of the Board.

331. Capillaire or sweet finings may be added to wines for home consumption, in a proportion not exceeding one per cent, and with the sanction of the Board a greater percentage may be added for

exportation only. The same proportion may be added to spirits for exportation. The percentage must be recorded to one-tenth, and in either case the description will not be altered. (*See* par. 337.)

332. Colouring or sweetening matter may with the Board's sanction be added to wines of different sorts mixed in warehouse for exportation. The merchant must state in his application the quantity or proportion of sweetening or colouring matter proposed to be added. The casks must be re-examined both prior to and after the operation, and they are to be marked "mixed and sweetened wines," the goods being also so described in the warehouse books and documents with the addition "for exportation only." (*See* par. 210.)

333. Foreign spirits may not be fined, sweetened, or coloured for home consumption, and they may not be compounded for any purpose whatever. They may, however, be filtered, and rum, or imitation rum, may be fined with milk. British spirits may be filtered in a bottling compartment or in a vatting compartment, after being reduced.

334. Colouring matter in a fluid state may be added to British spirits for home consumption in the proportion of one pint to every 80 gallons, on the distinct understanding by the proprietor that the addition of colouring shall not be a ground for altering the usual allowances, and that it shall not change the denomination of the spirits.

335. When colouring matter has been added to British spirits a statement of the circumstances must be made in the account in the register, and on all subsequent removals the fact that the spirits have been so coloured and the proportion added must be stated in the despatch.

336. Ordinary colouring matter, at the merchant's discretion as to quantity, may be added to spirits in a vat when they are intended for exportation only, or it may be added to spirits in casks for exportation, but in this case the addition is to be made only after the delivery account for shipment has been taken, and a note of the addition is to be made in the book in which the delivery account is recorded.

337. British spirits for exportation or ships' stores may have any sweetening or colouring matter, or any other ingredient, added to them in warehouse by a distiller or rectifier. The spirits must, except as provided for in par. 336, be removed into a separate room or compartment having no communication with the other part of the warehouse, except by a door under Crown lock. (*See* par. 331).

338. When British compounds not exceeding 11 o. p., not described in the warehouse entry as liqueurs, are warehoused and afterwards coloured and sweetened for exportation, and drawback on the sugar is not claimed, a sample of the spirits thus operated on must be sent to the local laboratory, or testing office, and the account dealt with as directed in par. 339. The allowance of 5d. a gallon on the spirits so coloured and sweetened must not be paid until a certificate of actual exportation is received from the Customs. (*See* par. 573). If British compounds of any strength are sweetened after deposit in warehouse, and the trader declares on the operation notice the quantity of sugar in each liquid gallon, the sample must be sent to the Government Laboratory, Clement's Inn Passage, Strand, W. C.

339. When spirits have been sweetened or coloured in warehouse so that the strength cannot be ascertained by the hydrometer, a sample is to be sent to the laboratory, or testing office, to be tested by distillation. The account is to be set out and balanced at the strength shown by distillation, but should the spirits be required for exportation before this has been ascertained, they may, on the merchant's request, be delivered, the delivery account being shown at the strength determined by calculation and the operation account subsequently adjusted and balanced at the strength found by distillation. In all such cases, the hydrometer indication is to be given on the despatch. (See paragraph 562.)—G. O. 45, 1904.

340. Spirits may be reduced in warehouse with water for bottling, exportation, or stores, or for fortifying purposes. Spirits so reduced may be re-warehoused under the ordinary regulations as to allowances for waste, but are inadmissible for home consumption except in bottles. Spirits may also be reduced in bottling warehouses in accordance with par. 379. When water is to be added to spirits in casks, as much spirit may be drawn off from each cask as is required to make room for this purpose. The over-drawings if of legal bulk may be re-warehoused, but if less than nine gallons they must either be used in another operation or cleared on payment of duty, though otherwise inadmissible. The casks containing the overdrawings must be numbered and marked as directed in pars. 312, 315, and 319.

*Excerpt from pages 420-422.*

#### FORTIFYING FOREIGN WINE.

354. Wine in casks may be fortified in warehouse for home consumption with spirits to the extent of 10 proof gallons of spirits to 100 gallons of wine, provided the wine be not thereby raised to a greater strength than 40 degrees proof spirits. The strength of wine for home consumption must not be raised beyond 40 per cent. of proof spirits. The officer is responsible that the proportion of ten per cent. is not exceeded, and that such percentage is calculated according to the quantity of wine actually in the cask or vat at the time of the operation. He will take the re-examination account and superintend the addition of the spirits. The contents of the cask or vat must be thoroughly mixed and a sample sent to the laboratory, or testing office, for the purpose of ascertaining the strength.

354A. In the case of wine fortified in cask a sample for test may be drawn from one cask in ten, or fraction of ten casks in each operation, instead of from each cask, under the following conditions:

- (a) That the officer is satisfied that the wine is uniform in character.
- (b) That practically the same proportion of proof spirit is added to each cask.
- (c) That the calculated strength of the wine in each cask after fortifying does not exceed 29 degrees in the case of wines entered as n. e. 30 degrees and 39 degrees where entered as n. e. 42 degrees.



- (d) That should the test of the wine in any cask after fortifying show the strength to be short of 30 degrees by not more than 5-10th of a degree, or, in the case of the stronger wines, to be 5-10th of a degree or less short of 40 degrees, the whole of the casks in the operation be subjected to test.
- (e) That in every case the request for operation be granted subject to a sample for test being drawn from each cask if considered necessary.

The sample advice forwarded to the Laboratory must show the particular cask or casks sampled, and in respect of each cask in the operation the number, the bulk gallons, and actual strength of the wine, the quantity of wine drawn off, the bulk gallons and strength of the spirit added, and the calculated strength of the wine after fortification.  
—G. O. 24, 1908.

355. Spirits used for fortifying wine are to be deducted as proof from the spirit account and transferred as liquid to that for wine, and the whole bulk of fortified wine is to be treated as wine whether for home consumption or exportation.

356. Wine may be fortified to a strength beyond 40 degrees for exportation only, upon an application to the Board showing, to their satisfaction, that such fortifying is absolutely necessary for the preservation of the wine. In all such instances the officers must report whether the wine has been previously fortified and to what extent, and ascertain and report the actual strength of the wine together with their opinion as to the necessity for the additional fortifying.

357. Wine fortified with not more than 10 per cent. of proof spirits, but unintentionally raised above 40 degrees, may not be delivered, even for exportation, without the Board's sanction.

358. The spirits allowed to be used for fortifying are—

Foreign spirits unsweetened,

Foreign spirits unsweetened mixed in bond for exportation,

British plain spirits,

Spirits of wine,

all of which may be reduced for this purpose with water to any degree of strength not below proof.

359. The following spirits may not be used to fortify wine in bond, viz.:

Foreign spirits so sweetened or mixed that the strength cannot be ascertained by Sike's hydrometer,

British spirits sweetened or compounded.

360. Only so much wine may be removed from a cask as is necessary for the admission of the spirits required for fortifying, having due regard to the usual ullage, but wine may not be taken from a cask where such removal is not absolutely necessary. Wine so removed is to be either cleared by payment of duty, or used in another operation.

#### FORTIFYING BRITISH WINE.

361. British wine in casks intended for immediate exportation may be fortified with spirits on the following conditions, viz.:

- (a) That the wine be brought in casks to a warehouse duly approved for the purpose, but that it be neither manufactured, bottled, nor labelled in warehouse;

- (b) That the quantity of spirits be limited to 10 per cent.—i. e., 10 proof gallons of spirits to 100 gallons of wine;
- (c) That the wine when fortified be delivered for exportation only;
- (d) That the quantity of spirits mixed with the wine be entered on the warrant and export documents.

362. Should it be desired to fortify such wine beyond 10 per cent., a special application must be made to the Board showing that the additional fortifying is absolutely necessary for the preservation of the wine on the voyage, but the strength must not be raised above 40 degrees.

363. British cider and perry may be fortified to the same extent and on the same conditions as British wine.

#### FORTIFYING LIME OR LEMON JUICE.

364. Lime or lemon juice may be fortified in warehouse for exportation or ships' stores at the expense of the merchant under the following regulations.

*Excerpt from page 428.*

#### PERFUMING SPIRITS.

402. British spirits not being compounds, foreign spirits—except sweetened spirits and mixtures or preparations containing spirits—and foreign perfumed spirits, may be perfumed and bottled in warehouse for exportation or stores, or for exportation from a Customs warehouse by parcel post.

*Excerpt from page 446.*

495. As the sole purpose for which a bonded warehouse is approved is the secure keeping of dutiable goods until the duty is paid or the goods are exported, subject to any permissible operations thereon, warehouse-keepers and owners of bonded goods must be made to understand that the payment of duty entails an obligation to remove forthwith from bonded premises the goods in respect of which such duty is paid.

*Excerpt from page 447.*

500. The following may not be delivered for home consumption, viz. :

- (a) Spirits to which any sweetening or colouring matter has been added in warehouse except as provided in par. 334.
- (b) Spirits of wine from rectifiers or compounders.
- (c) Foreign spirits of different sorts, or foreign spirits and British spirits, mixed in warehouse.
- (d) Compounded sprits of a strength exceeding 11 degrees over proof.
- (e) Spirits, in cask, that have been reduced with water in warehouse.
- (f) British liqueurs, and tinctures or medicinal spirits.
- (g) Spirits perfumed and bottled in warehouse.
- (h) Wine fortified in warehouse to a strength exceeding 40 degrees, unless on re-testing it is found not to exceed 40 degrees.

- (i) Wine found on importation to be of 45 degrees of strength and upwards is not to be delivered without the Board's authority.
- (j) Wine mixed or bottled in warehouse. (*See* pars. 321 and 378.) For exception, *see* par. 352.

*Excerpt from page 460.*

## DRAWBACKS AND ALLOWANCES.

### ISSUE OF CERTIFICATES, &C. FOR PAYMENT.

572. Allowances of 3d. the proof gallon on British plain spirits and rectified spirits of wine, and 5d. the proof gallon on British compounded spirits, tinctures, essences, and perfumed spirits, are granted by law to distillers, and to rectifiers or compounders. An allowance of 3d. the proof gallon is granted (a) to methylators on the quantity of dutiable spirits used for making industrial methylated spirits and also on the quantity used for making *mineralized* methylated spirits *exported* by them; and (b) to persons authorized to receive spirits (other than methylic alcohol) duty-free in respect of the quantity received by them for use under section 8 of the Finance Act, 1902. (*See* par. 8.) The time for payment of any of these allowances is limited to a period of two years from the date of shipment, use, deposit, or receipt.

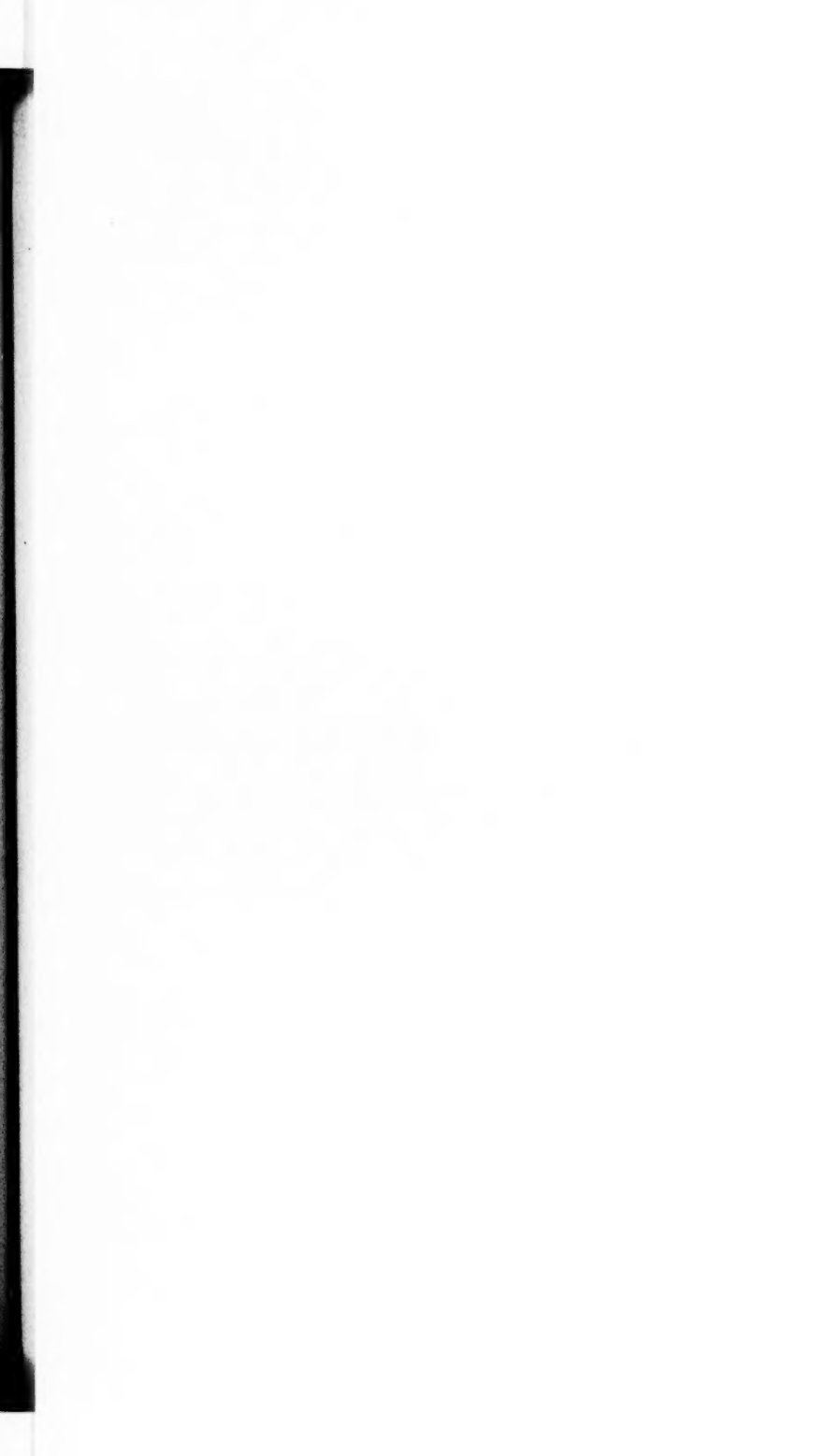
573. Certificates authorizing the payment of these allowances may be issued on the conditions specified below, and for the actual proof quantity of spirits deposited, used, exported, or received, as the case may be. The proprietor must in each in-

stance make a written application for the certificates (a), (d), and (e) mentioned below. For spirits removed to the Isle of Man, the Customs receipt must be obtained from the island before the certificate is issued. These certificates are to be issued, in the case of spirits exported or shipped as stores, to the person who shall have given security for such exportation or shipment, and in the case of spirits used in warehouse, to the person upon whose written request the spirits were so used.

Description of Spirits.	Allowance per proof gallon.	Conditions under which allowance is payable.	On what certificate payable.
(a) British plain spirits.	d. 3	On being exported, shipped as stores, or used in warehouse for fortifying wines or for any other purpose to which foreign spirits may be applied.	Nos. 532 and 532a Customs
(b) Rectified spirits of wine.	d. 3	On deposit in warehouse by a rectifier.	Nos. 88 and 88-1 Excise
(c) British compounds exceeding 11 o. p.	5	" " " "	Excise spirit certificate. (See par. 254.)
(d) British compounds not exceeding 11 o. p.		On being used for fortifying lime or lemon juice, or for any other purpose for which foreign spirits may be used, or on being actually exported or shipped as stores.	Nos. 532 and 532a Customs.
(e) British liqueurs, medicinal spirits and tinctures, in casks.	5	On being exported or shipped as stores.	Nos. 88 and 88-1 Excise.
(f) British tinctures, essences, and perfumed spirits, in bottles.	5	On production of Laboratory certificate as to strength, and Customs certificate as to exportation.	Nos. 532 and 532a Customs. Nos. 88 and 88-1 Excise. Form No. 111-6 Excise.
(g) Dutiable spirits used in making mineralized methylated spirits.	3	On being exported direct from the place of methylation.	Nos. 88 and 88-1 Excise.
(h) British plain spirits, or Foreign unsweetened spirits, Rum, or Imitation Rum.	3	On being used for making industrial methylated spirits.	Nos. 89 and 89-1 Excise. Nos. 548 and 549, Customs.
(i) British plain spirits, or Foreign unsweetened spirits (other than methyllic alcohol).	3	On being received for use duty-free under section 8 of the Finance Act, 1902.	Nos. 89-2 and 89-3 Excise.

*Excerpt from page 462.*

574. Certificates for allowances are not to be issued for rectified spirits of wine, nor for compounded spirits exceeding 11 per cent. over proof, when exported or used in bond, the certificates having been issued on their deposit in warehouse. (See par. 563.)





6  
**Nos. 62 and 63.**

DEC 20 1918  
JAMES D. MAHER  
CLERK

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IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1918

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No. 62

G. S. NICHOLAS & CO., et al.,  
Petitioners,

v.

THE UNITED STATES.

---

No. 63

ALEX. D. SHAW & CO., et al.,  
Petitioners,

v.

THE UNITED STATES.

---

ON WRITS OF CERTIORARI TO THE UNITED STATES  
COURT OF CUSTOMS APPEALS.

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**BRIEF FOR THE UNITED STATES.**

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No. 63

ON WRITS OF CERTIORARI TO THE UNITED STATES  
COURT OF CUSTOMS APPEALS.

**BRIEF FOR THE UNITED STATES.**

---

**Statement of the Case.**

These cases are here on writs of certiorari to review judgments of the Court of Customs Appeals rendered May 12, 1916 (R. 72; 7 Ct. Cust. Appls. 97), affirming a decision by the Board of United

States General Appraisers (R. 16; T. D. 35595) which overruled importers' protests (R. 7-8 and 9-10) against the action of collectors of customs at Boston and New York, assessing additional or countervailing duties on whisky and gin imported from Great Britain (R. 9 and 10). The board's decision also overruled protests arising at Chicago and Los Angeles (R. 22); but as to those protests there is no appeal.

Under the laws of Great Britain a certain "allowance" is paid by the British Government to exporters of potable spirits, to wit, threepence per proof gallon on plain British spirits and fivepence per proof gallon on British compounded spirits. The only question involved in these cases is whether that allowance constitutes a bounty or grant which subjects such spirits, upon their importation into the United States, to an additional duty under paragraph E, section IV, tariff act of October 3, 1913 (38 Stat. 114, 193), which reads:

*E. That whenever any country, dependency, colony, province, or other political subdivision of government shall pay or bestow, directly or indirectly, any bounty or grant upon the exportation of any article or merchandise from such country, dependency, colony, province, or other political subdivision of government, and such article or merchandise is dutiable under the provisions of this Act, then upon the importation of any such article or merchandise into the United States, whether*



the same shall be imported directly from the country of production or otherwise, and whether such article or merchandise is imported in the same condition as when exported from the country of production or has been changed in condition by remanufacture or otherwise, *there shall be levied and paid*, in all such cases, in addition to the duties otherwise imposed by this Act, *an additional duty equal to the net amount of such bounty or grant, however the same be paid or bestowed*. The net amount of all such bounties or grants shall be from time to time ascertained, determined, and declared by the Secretary of the Treasury, who shall make all needful regulations for the identification of such articles and merchandise and for the assessment and collection of such additional duties.

The Secretary of the Treasury has ascertained, determined, and declared the net amount of the bounty or grant which it is claimed is paid or bestowed upon the exportation of spirits from the United Kingdom. He declared that the allowance on whisky is 3d. per gallon, and on gin 5d. per gallon (T. D. 34466; T. D. 34752). (Copies of those treasury decisions are printed as Appendix A.) On the instant importations the collectors of customs levied additional duties accordingly (R. 9 and 10). The Board of General Appraisers unanimously affirmed the collectors' assessments (R. 16-22); and the Court of Customs Appeals unanimously affirmed the board's decision (R. 55-72).

A clearer statement of the nature and effect of the allowance can be made by first outlining the British excise and customs duties on spirits.

### **The British Duties of Customs and Excise.**

#### **CUSTOMS DUTIES.**

The import duty upon spirits when imported in casks runs from 15s. 1d. to 15s. 3d. per proof gallon; and when imported in bottles from 16s. 1d. to 16s. 3d. (p. 18, exhibit 4).

#### **EXCISE DUTIES.**

The excise duty on spirits distilled in the United Kingdom is 14s. 9d. per proof gallon (p. 33, exhibit 4).

#### **WAREHOUSES.**

After distillation spirits must forthwith be conveyed to the distiller's spirit store but they cannot remain there more than ten days (section 13; subsection 9 of section 38; and subsection 4 and 8 of section 43, Spirits Act of 1880). The spirit store is simply a place for temporary storage. It is not a statutory warehouse.

On removal from a spirit store spirits may be warehoused without payment of the excise duty, either in the distiller's warehouse or in a general warehouse. The purpose for which warehouses are approved is the secure keeping of dutiable goods until the duty is paid or the goods are exported

(pp. 355, 446, exhibit 4). A distiller's warehouse is a private warehouse located on the distiller's own premises. Therein he may store only spirits distilled on the same premises (p. 86, part 3, exhibit 2). General warehouses are for the accommodation of the public. They may be either crown warehouses (i. e. owned by the government) or private warehouses officially approved. There are two classes of general warehouses, viz., excise warehouses and customs warehouses (sections 3, 49, 50, 54, 56 and 57, Spirits Act of 1880).

The definitions of and distinctions between crown, customs, excise, and general warehouses on page 22 of petitioners' brief in the Shaw case are erroneous. An excise warehouse may be either a crown or a private warehouse. It is one which is either approved or provided by the Commissioners of Excise as a general warehouse for the deposit of spirits. Likewise a customs warehouse is one which is either approved or provided by the Commissioners of Customs for the deposit of spirits (section 3, Spirits Act of 1880). The enactments relating to goods liable to excise duty which are in an excise warehouse also apply to such goods when they are in a customs warehouse; and the enactments relating to goods liable to customs duty which are in a customs warehouse also apply to such goods when they are in an excise warehouse (p. 349, exhibit 4). For the purposes of this case, there is no distinction between goods warehoused in the two classes of general warehouses.

Excise duties must be paid when spirits are withdrawn from warehouse for home consumption (section 75, Spirit Act of 1880), except that when withdrawn for certain industrial uses spirits may be exempted from the excise duties (section 8, Finance Act of 1902). The statement on page 2 of petitioners' brief in the Nicholas case that an excise tax is not imposed on spirits as such, but only on potable spirits when entering into domestic consumption, is not accurate. The tax is imposed on all spirits as such, but those which are put to certain uses are exempted from the payment of the tax.

All potable British spirits consumed in the United Kingdom pay the excise tax; but when exported they are exempt therefrom. In levying the countervailing duties in the instant cases the collectors did not treat the exemption as a bounty or grant. The Board of General Appraisers suggested that possibly the reason why such a countervailing duty was not imposed was because the amount of the domestic tax may have been considered in finding the market value (R. 21). The Court of Customs Appeals also referred to the question (R. 62-63). There is before this court no question growing out of the exemption of the imported spirits from the British excise tax. The only question now here arises because of the assessment of a countervailing duty equal to the "allowance."

## **The British statutes granting allowances on spirits.**

The allowance was instituted by section 4 of the Spirits Duties Act of 1860. It was extended by Section 12 of Chapter 98, 28 and 29 Vict., 1865. Both statutes were repealed by section 10 of the Customs and Inland Revenue Act of 1885, section 3 of which is the earliest extant act granting an allowance on spirits. When reading that statute one needs bear in mind the following definitions taken from the third section of the Spirits Act of 1880:

“Spirits” means spirits of any description, and includes all liquors mixed with spirits, and all mixtures, compounds or preparations, made with spirits.

“Low wines” means spirits of the first extraction conveyed into a low wines receiver.

“Feints” means spirits conveyed into a feints receiver.

“British spirits” means spirits liable to a duty of Excise.

“Plain spirits” means any British spirits, (except low wines and feints,) which have not had any flavour communicated thereto or ingredient or material mixed therewith.

“Spirits of wine” means rectified spirits of the strength of not less than forty-three degrees above proof.

“British compounds” means spirits redistilled or which have had any flavour communi-

cated thereto, or ingredient or material mixed therewith.

"Foreign spirits" means all spirits and strong waters liable to a duty of Customs.

Low wines and feints are impure spirits, a product of distillation which never leaves the distillery in such state (T. D. 34466).

Section 3 of the Customs and Inland Revenue Act of 1885 reads:

3.—(1) Where any spirits distilled and rectified in the United Kingdom *are exported from an Excise or Customs warehouse, or are used in any such warehouse for fortifying wines, or for any other purpose to which foreign spirits may be applied*, there shall be paid in respect of every gallon of such spirits, computed at hydrometer proof, the following allowances; that is to say,—

In respect of plain British spirits, and spirits of the nature of spirits of wine, an allowance of twopence, and

In respect of British compounded spirits, an allowance of fourpence.

(2) The allowance shall be paid, in the case of spirits exported, to the person who shall have given security for the exportation, and in the case of spirits used in warehouse, to the person upon whose written request the spirits shall have been so used.

There is no specific definition of "spirits of the nature of spirits of wine," but in practice the words

are interpreted as identical with the words "spirits of wine," as above defined (T. D. 34466).

It should be noted that after distillation and before their use as beverages spirits are commonly subjected to various operations. None of those operations can be applied while the spirits are in a spirit store. In a distiller's warehouse they may be vatted, blended, or racked (p. 356, exhibit 4); but all other operations (such as reducing, bottling, sweetening, coloring, etc.) have to be performed in an excise or customs warehouse (sections 43, 44, 64, 67, 68, 69, 70, 87-89 of the Spirits Act of 1880).

The effect of the act of 1885 was somewhat changed by section 5 of the Finance Act of 1902 which contains the following:

(2) For the purpose of section three of the Customs and Inland Revenue Act, 1885, spirits shall be deemed to be British plain spirits, or spirits in the nature of spirits of wine, and not to be British compounded spirits, unless they are proved to the satisfaction of the Commissioners of Inland Revenue to have been distinctly altered in character by re-distillation with or without the addition of flavouring matter.

The effect of the act of 1885 was further changed by the following provision in the Revenue Act of 1906:

8. The word "by" shall be substituted for the word "without" in subsection (2) of section

five of the Finance Act, 1902 (which relates to the allowance on spirits).

By the Finance Act of 1902 the allowances of twopence and fourpence were increased to "respectively threepence and fivepence," at which amounts they now remain (R. 35, 43).

#### THE ALLOWANCE ON INDUSTRIAL SPIRITS.

An allowance on industrial spirits was granted by the Finance Act of 1895, the sixth section of which granted "to the exporter" of methylated spirits an allowance of twopence per gallon.

The allowance for industrial spirits was broadened by section 1 of the Finance Act of 1906, which contains the following provision:

*Where any spirits are used by an authorized methylator for making industrial methylated spirits, or are received by any person for use in any art or manufacture under section eight of the Finance Act, 1902, the like allowance shall be paid to the authorized methylator or to the person by whom the spirits are received, as the case may be, in respect of those spirits as is payable on the exportation of plain British spirits, and the Commissioners may by regulations prescribe the time and manner of the payment of the allowance and the proof to be given that the spirits have been or are to be used as aforesaid.*



Section 4 of that act defined "industrial methylated spirits" as "any methylated spirits (other than mineralized methylated spirits) which are intended for use in any art or manufacture in the United Kingdom." Thus the Finance Act of 1906 covered those methylated spirits upon which an allowance had been granted by the sixth section of the Finance Act of 1895, which section was consequently superseded by the act of 1906. (This statement is confirmed by the 32nd Edition of Chronological Table and Index of the Statutes.)

The reference in the act of 1906 to the Finance Act of 1902 may be best explained by quoting from sub-section 1 of section 8 thereof:

Where, in the case of any art or manufacture carried on by any person in which the use of spirits is required, it shall be proved to the satisfaction of the Commissioners of Inland Revenue that the use of methylated spirits is unsuitable or detrimental, they may, if they think fit, authorise that person to receive spirits without payment of duty for use in the art or manufacture upon giving security to their satisfaction that he will use the spirits in the art or manufacture, and for no other purpose, and the spirits so used shall be exempt from duty:

#### COMMENT ON CERTAIN PORTIONS OF THE NICHOLAS BRIEF.

Thus we see that section 3 of the Customs and Inland Revenue Act of 1885 and section 1 of the

Finance Act of 1906 are the statutes which grant allowances on British spirits. The act of 1885 grants an allowance on spirits which are used as beverages, and the act of 1906 grants an allowance on spirits which are put to industrial uses.

Because the American consul at Edinburgh stated that the act of 1885 is "the *original* law granting an allowance on the exportation of whisky" (R. 40-41), petitioners' brief in the Nicholas case says (p. 29) that "the consul's investigations, if not superficial were at least not thorough." Even if the consul's use of "original" were incorrect, would that be adequate ground for discrediting his investigations? Is the Nicholas brief to be stigmatized as either "superficial" or "not thorough" merely because at the bottom of page 3 it says that the acts of 1860 and 1865 relative to allowances are "applicable laws of Great Britain," disregarding the specific repeal of those acts by section 10 of the Customs and Inland Revenue Act of 1885? Evidently the consul knew the fact. The act of 1885 is the earliest extant statute granting an allowance, and when read as a whole the consul's report (R. 40-41) is not misleading.

Pages 17-18 and 47 of the Nicholas brief are misleading in so far as they state that the allowance is paid on additional classes of spirits. The brief says (p. 18) that the allowance is paid on "British spirits for use, duty free, at universities and colleges, etc."; and on "British spirits when

used as naval or ships' stores." Those are not additional classes.

Pages 61 and 165, part 1, Ham's Year Book (exhibit 2) show that the allowance to universities and colleges is paid under the same statute as the allowance to users in the arts, viz., section 1 of the Revenue Act of 1906. The allowance to universities is paid only on spirits which are used in laboratories (p. 165, exhibit 2). In short, it is an allowance on spirits put to industrial uses.

As authority for the payment of an allowance on spirits used as naval or ships' stores petitioners' brief cites "G. O. No. 6, 1887" which is cited on p. 105 of exhibit 4. Is it not probable that "G. O. No. 6, 1887" indicates an administrative ruling made in 1887 by some official body such as the Commissioners of Inland Revenue, which ruling is cited as General Order No. 6, 1887? In 1887 the only statute granting an allowance was section 3 of the Customs and Inland Revenue Act of 1885, which granted the allowance on spirits which are exported. Page 105 of exhibit 4 shows that spirits which have been shipped as ships' stores are treated as spirits which "have been exported"; and the note at the bottom of the table of allowances on pages 43 and 44, part 3, Ham's Year Book (exhibit 2) contains the following: "By the word 'exported' is also meant 'shipment as stores.'"

### **Brief of Argument.**

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**ARGUMENT****I.****The allowance is paid on all potable spirits exported from the United Kingdom.**

The Customs and Inland Revenue Act of 1885 provides for the payment of an allowance on spirits which are exported "from an excise or customs warehouse." Assuming that spirits are exported from other classes of warehouses, petitioners' briefs assert that not all exported spirits get allowances.

Even on an actual exportation from a distiller's warehouse an exporter may get the allowance. The exporter may be either the distiller himself or one to whom the distiller has sold the spirits (section 63, Spirits Act of 1880). On merely *conveying* spirits from a distiller's warehouse to an excise warehouse (without actually *depositing* them therein), the proprietor of spirits may "make an entry thereof \* \* \* for exportation \* \* \* and thereupon the spirits of which entry is so made shall be considered as if they had been actually deposited, and may be delivered and removed accordingly." (Section 73, Spirits Act of 1880.) Thus, at a trifling expense for drayage, an exportation from a distiller's warehouse becomes constructively an exportation from an excise warehouse with the attendant benefit of the allowance.

Inasmuch as the cost of producing plain spirits in 1905 was, roundly, 9d. per proof gallon (R. 36-37), it is obvious that no exporter would neglect to get the allowance of 3d. per gallon which is said to be "a fair wholesale profit" (R. 43).

Even if the record were silent on the point, it could be confidently asserted that in commercial transactions no spirits are exported from the United Kingdom without the benefit of the allowance. Practical business men do not lightly cast aside financial rewards from their governments. No one doubts that the great distilling interests of the United Kingdom are in the hands of practical business men. But the record is not silent. There is a statement by "Mr. Peter Dawson, one of the largest Scotch distillers," that the allowance is given "upon so much" of the distiller's product as "being potable is exported from the country"; that the payment "is allowed \* \* \* against *all* liquor exported from the country"; and that the Government has authorized a separate account to be kept of all distilled spirits exported from the country upon which "it returns to the distiller, producer, blender, or bottler, an allowance of three pence" (R. 49). The reports from the American consul at Edinburgh, Scotland, also indicate that the allowance is paid on all spirits exported from the United Kingdom (R. 40-43).

If there had ever been an exportation of potable spirits without an allowance, doubtless petitioners

would have proved the fact. They offered no such proof. The presumption is against them on these appeals.

## II.

**The argument that the allowance is paid because of the "patriotism" of the distiller who "voluntarily" submits to extra expense is grotesquely fanciful.**

Contrasting (a) an exportation from a spirit store or a distiller's warehouse against (b) an exportation from an excise or customs warehouse, the Shaw brief says that on the first the distiller could not, while on the second he would get an allowance. The brief asserts (p. 22) that the motive which influences the distiller's choice of the latter is "not the expectation of an allowance, but patriotism." The brief asserts that while the Government wishes to have spirits pass through excise or customs warehouses so as to get a second check upon the amount distilled, yet the Government refrains from compelling a double checking lest distillers regard that "as an unbearable interference with individual rights." The brief asserts that "the allowance by no means makes up for the loss and hindrance of subjecting the spirits to this second checking process"; and that the allowance is paid to prevent the distiller's "patriotism costing him too much money."

The brief's contention that the allowance is an offset to the cost of a "second checking process" differs from the British contention that the allowance does not equal the "loss caused to British distillers by the elaborate excise machinery" as a whole (R. 24, 26, 29, 31, 33-34, 35, 36, 37, 38, 39, 44, 47, 49, 50; section 42, p. 357, exhibit 4; p. 61, part 1, and p. 43, part 3, exhibit 2; p. 186, exhibit 3).

The brief's contention also conflicts with the statements on pages 4-5 and 10 of the petition for writs of certiorari, that the allowance is made to compensate the manufacturer for the enhanced cost of production resulting from the "statutory restrictions in connection with his plant and method of manufacture." The Nicholas brief (p. 2) still stands by that contention. That is the substance of the head note on page 19 of the Shaw brief, though a different position is taken in the following 10 pages of argument.

The Shaw brief further asserts (p. 24) that the spirits which are to "go into domestic potable consumption are *compelled* to be submitted" to the double checking. (*Italics copied.*) Whether destined for home consumption or for exportation, the regulations respecting the delivery of spirits out of warehouse are the same (sections 483-505, 513-526, 537-570 of The Warehousing Code on pp. 444-448, 449-452, 454-460 of exhibit 4).

The minutiae of the Spirits Act of 1880 and of the Warehousing Code (pp. 355-467, exhibit 4) show that Great British has not jeopardized its



revenue out of fear that distillers might regard its regulations as "an unbearable interference with individual rights." It recognizes that there is no such "patriotism" as will prevent attempts to cheat the government out of its revenue (pp. 360, 404-406, exhibit 4).

The argument that the allowance of 3d. is paid because of the "patriotism" of those *distillers* who "voluntarily submit" to a "second checking process" overlooks the fact that an allowance of 5d. is paid to *rectifiers*. As has already been pointed out herein, no operations are permitted in a spirit store and the processes employed in the production of rectified and compounded spirits are not permitted in a distiller's warehouse. The spirits used by rectifiers are subject to checking not only before they leave the distiller's premises but also after receipt by the rectifier (section 90, Spirits Act of 1880). In respect of rectified spirits a second checking is obligatory. Hence rectified spirits are not "voluntarily" submitted to a double checking process; and the payment to rectifiers is not because of their "patriotism." The 2d. in the allowance paid to rectifiers additional to that paid to distillers is because of the restrictions imposed on rectifiers (R. 35-36, 44, 47). The instant cases involve gin upon the exportation of which the allowance of 5d. was paid.

## III.

**The allowance is paid to assist the British producer who is manufacturing spirits for the foreign market.**

The Shaw brief says (p. 20) that "Mr. Gladstone, at some length, pleaded before the House of Commons, the right of distillers and rectifiers to such limitation of the imposed burdens as would not interfere with the effectiveness of the regulations." The brief cites no authority for either Mr. Gladstone's exact statement or the brief's interpretation thereof. Citing pages 1705-7, volume 156, 3d series, Hansard's Parliamentary Debates, the Nicholas brief (p. 4) quotes Mr. Gladstone as saying in 1860 that he intended to propose a limited allowance "in consequence of the disadvantage under which the British distiller labored." Wrenched from their context, the quoted words do not convey the full import of the statement made by the Chancellor of the Exchequer. After stating the proposed duties on spirits, he is reported as saying (p. 1706):

To make the information complete, he would state that it was the intention of the Government, in consequence of the disadvantage under which the British distiller labored *in endeavoring to manufacture spirits for the foreign market*, to propose a limited allowance *on the export of British spirits* over and

above the amount of export duty ruling; that allowance was as follows: on raw and unrectified spirits, 2d. per gallon; on rectified and potable spirits—that was, spirits prepared for consumption—3d. per gallon. (*Italics ours.*)

The statute subsequently enacted in 1860 provided for the payment of an allowance to the distiller or proprietor of spirits “on the exportation thereof from a duty-free warehouse, or on depositing the same in a customs warehouse”; and also for the payment of an allowance to a licensed rectifier on his depositing “in a customs warehouse” spirits distilled and rectified in the United Kingdom. The record now here is silent as to the conditions under which, or the purpose for which, spirits were deposited in a customs warehouse in 1860; but it is a fair inference that spirits were then so deposited for substantially the same reasons as they are now so deposited. The statement by the Chancellor of the Exchequer indicates that the sole purpose of the Government in proposing the allowance was to aid the *exporter* of British spirits.

A statement made jointly by the Chairman and Deputy Chairman of the British Board of Customs and Excise in 1911 shows that such was the purpose of the statute (R. 29). In another joint statement they said that the “object with which they [the allowances] were introduced by Mr. Gladstone in 1860” was “that they should recoup *the exporter*” (R. 36).

By section 12, 28 and 29 Vict., chapter 98, 1865 (Ex. 1-b), the allowance granted by the act of 1860 was extended to compounded spirits deposited in any warehouse of customs or excise

*and exported to foreign parts, or used in a customs warehouse for fortifying wines or for any other purpose to which foreign or colonial spirits may be applied under the laws or regulations of the customs.*

Here again was expressed the purpose to aid the British exporter. The allowance was also payable upon British spirits "used in a *customs* warehouse for fortifying wines or for any *other* purpose to which *foreign or colonial* spirits may be applied *under the laws or regulations of the customs.*" The uses to which spirits could be put in a customs warehouse in 1865 does not appear in the record; but clearly use for fortifying wine was one of those uses and that was one of the uses to which foreign spirits could be put. As *customs* warehouses were specified, it is probable that the operations had to do with merchandise which could be exported duty free. As that statute has been repealed we have no further interest therein.

The acts of 1860 and 1865 were repealed by the Customs and Inland Revenue Act of 1885, section 3 of which grants the allowance on two classes of spirits, viz., (1) those "exported from an excise or customs warehouse"; and (2) those "used in any such warehouse for fortifying wines, or for

any other purpose to which foreign spirits may be applied." The exported spirits compete with foreign spirits in foreign markets. The spirits used in warehouses also compete with foreign spirits—certainly in foreign markets and to some extent in domestic markets. Many and indeed most of the uses to which British spirits may be put in warehouses are in preparing wines and spirits for exportation (sections 321, 323, 337, 361, 364, and 402 of The Warehousing Code, on pages 415, 416, 417, 421, 422 and 428 of exhibit 4). In addition they may be used in fortifying wine for home consumption (section 354 of The Warehousing Code, on page 420, exhibit 4); but foreign spirits also may be used for that purpose (section 358 of The Warehousing Code on page 421 of exhibit 4). Thus we see that the only spirits upon which the act of 1885 grants the allowance are those which come into competition with foreign spirits, and that for the most part that competition is in foreign markets.

In the instant cases we are little concerned with the allowance on *industrial* spirits. It is interesting only so far as it throws a light on the purpose for which an allowance is granted on *potable* spirits. Section 6 of the Finance Act of 1895 granted an allowance "to the exporter" of methylated spirits; and the Revenue Act of 1906 broadened the allowance on industrial spirits. In 1905 evidence was given before the Industrial

Alcohol Committee of the British Customs and Excise Department by "Mr. Nicholson of J. W. Nicholson and Son of London, a leading firm of distillers." He testified (R. 36):

The 3d. *allowed for export* is very insufficient. We have no chance in a neutral market, and it is only, generally speaking, where British spirits is asked for that we can get a chance of competing." (*Italics ours.*)

That testimony does not seem to be in accord with the contention of the Shaw brief (p. 29) that the British exporter would make a greater profit if he received no allowance on his exported spirits.

In the same year that Mr. Nicholson testified the Committee on Industrial Alcohol made a report in which it was pointed out

that for all industries using alcohol the price of the spirit is an important factor *for that portion of the trade that lies outside of the home market* (R. 33).

The committee recommended an allowance (R. 34); and thereafter was enacted the Finance Act of 1906, which gave to spirits used for making industrial methylated spirits and to other industrial spirits a "like allowance" to that "payable on the *exportation* of plain British spirits." The British representatives cite the 1905 report as "evidence of the object and policy" of the allowances on exported potable spirits (R. 30-31).

In 1914 a representative of the Scottish Whisky Exporters Association stated to the British Secretary of State for Foreign Affairs that the allowance had been given to aid the British distiller in his competition with foreign distillers in foreign markets (R. 50).

British spirits are given protection in the home markets by the excess of customs duties over the excise duties (R. 24). The excise duty is 14s. 9d., and the customs duties on spirits imported in casks range from 15s. 1d. to 15s. 3d. When imported in bottles the customs duties are 1s. higher. Protection has been thus accorded to British spirits ever since 1860 (R. 51). On few classes of spirits is the excess the exact equivalent of the allowance on similar classes of British spirits.

Protection to British spirits is given by the eighth section of the Finance Act of 1902, which permits spirits (both British and foreign) to be used in art and manufacture without the payment of duty. That section contains a proviso that foreign spirits may not be used duty free "until the difference between the duty of customs chargeable thereon and the duty chargeable on British spirits has been paid."

The Nicholas brief truly says (pp. 16-17) that ever since 1860 there has been a progressive purpose manifest to confine the excise tax to "spirits which go into domestic *potable* consumption." It also says that "all spirits not so destined" not only escape the tax but get the allowance. The exact facts may be stated as follows: Before 1895 only

potable spirits received the allowance; and they received it only when they were either to be exported or to compete with foreign spirits. In 1895 the allowance was extended to the exporter of methylated spirits. In 1902 exemption from excise duties was granted to spirits used in art and manufacture; and in 1906 the allowance was extended to spirits so exempted and to all spirits used for making industrial methylated spirits. This extension (in effect a reduction of the cost of producing industrial alcohol) was because "the price of the spirit is an important factor for that portion of the trade that lies outside the home market."

The allowance was instituted in 1860 to aid (using the words of Mr. Gladstone) "the British distiller \* \* \* endeavoring to manufacture spirits for the foreign market"; and every extension of the allowance has been to aid producers who are engaged in the same endeavor.

At pages 29-30 of the Shaw brief it is argued that the allowance is not an allowance upon exportation, because on compounded spirits exceeding eleven degrees over proof the allowance is payable upon the deposit thereof in warehouse. Spirits of that strength may not be used for home consumption (p. 447, exhibit 4); and deposit thereof in warehouse is merely a step preliminary to the exportation thereof.

The Shaw brief cites no authority for its statement (p. 28) that the allowance would be paid if spirits "were thrown into the Atlantic ocean."



On page 29 of the Shaw brief it is asked why in T. D. 34466 the Secretary of the Treasury expressly excepts methylated spirits from the countervailing duty. The answer is obvious. Under the Revenue Act of 1906 the allowance on methylated spirits applies generally, that is, whether the spirits are used in the United Kingdom or exported. Our Government levies a countervailing duty only when the British exporter is given an advantage which he does not enjoy at home. We levy a countervailing duty on potable British spirits because the British government rewards the exporter for and upon exportation.

#### IV.

#### **The Allowance is Not a Drawback.**

The Nicholas brief refers to the expense to which the British manufacturer is put by the system of excise surveillance as "an additional excise tax" (p. 30) and as a "surtax" (p. 49); and it argues (pp. 42-43) that in remunerating the manufacturer for the extra expense the Government is paying him a drawback.

Wharton's Law Lexicon, 12th Ed., defines "drawback" as "a term used in commerce to signify the remitting or paying back upon the exportation of a commodity of the duties previously paid on it." That is also the effect of the definition in the British Warehousing Code (p. 357, exhibit 4). (See also Second Schedule of Finance Act, 1902.) Obviously the British allow-

ance on exported spirits is not a drawback because it is not a repayment of any tax previously paid to the Government.

## V.

### **The allowance is a bounty or grant.**

The simple issue in these cases is whether the allowance which the British government pays to the exporter of potable spirits is a bounty or grant under paragraph E, section IV, tariff act of 1913. That paragraph provides that whenever any country shall pay or bestow any bounty or grant "upon the exportation of any article or merchandise from such country, \* \* \* and such article or merchandise is dutiable under the provisions of this act, then upon the importation of any such article or merchandise into the United States," the additional duty therein provided for shall be imposed, "however the same [the bounty or grant] be paid or bestowed."

The "article or merchandise" upon which countervailing duty was levied is whiskey and gin—some in bottles, some in casks. Whisky is a product of distillation which by blending, etc., etc., is made usable as a beverage. Gin is a product of distillation which by redistillation in the presence of flavoring substances becomes usable as a beverage.

The Nicholas brief says (p. 2) that the allowance is paid to compensate the manufacturer, at least in part, for "extra expenses, which are no part of the

normal cost of manufacture, and which the Government for its own ends requires him to incur." For revenue purposes the British government does require distillers and rectifiers so to conduct their businesses that their costs of manufacture are enhanced. So also do our State regulations for the reduction of fire hazards, for the protection of laborers, etc., increase costs of production in this country; but no one would say that compliance with such regulations does not enter into the natural costs of production. Neither would one say that the entire cost of raw materials is not a part of the normal cost of American products, on the ground that the cost of raw material is enhanced by our protective tariff. It is submitted that the natural cost of an article is the cost of making that article ready for the market under the conditions normally obtaining at the place of production.

Recognizing that there is an "enhanced cost due to excise control" which is a "disadvantage" to its producers "endeavoring to manufacture spirits for the foreign market," the British government pays an "allowance" by which "the enhanced cost is neutralized for exports." To illustrate: Upon a proof gallon of plain spirits which it cost 9d. to manufacture in 1905, the Government pays to the exporter upon exportation 3d. Hence the net manufacturing cost is reduced by that amount. The net cost of exported plain spirits is about two-thirds of the cost of similar spirits sold at home. British distillers and blenders can enter our American

markets upon better terms than they can enter their domestic markets. Because of government aid they can sell here at a less price or at a greater profit than they can sell at home. With the aid of the allowance they go into foreign markets and sell a part of their product. If they could compete in those foreign markets without the allowance, surely the allowance is a bounty. If they could not compete without the allowance, it is still a bounty.

On the assumption that the allowance is no more than that part of the cost of production chargeable to excise regulations, the British Ambassador argues that "where there is no net benefit there can be no bounty or grant" (R. 25). Were it to be conceded in principle that compensation for the disadvantage of the excise regulations is not a bounty or grant, still the United States would not be concluded by the fact that the British statute specifies an arbitrary amount as the measure of the damage caused by the excise hindrance. It would be for the United States to determine the actual measure of the damage; and the excess of the allowance over the actual damage (if there be an excess) would be the amount to be countervailed. Otherwise, foreign nations seeking to foster their industries by bounties and grants would have a ready method of disguising their bounties and circumventing our countervailing duty law. They could accomplish that end by a legislative declaration that the bounty paid directly to an exporter upon exportation was merely compensation for

some hindrance caused by governmental regulations.

In the instant cases the British allowance was instituted by a statute which declared that it was granted "in consideration of the loss or hindrance caused by excise regulations"; but the Chancellor of the Exchequer had declared the intention "to propose a limited allowance on the export of British spirits" because of the disadvantage under which the British distiller labored "in endeavoring to manufacture spirits for the foreign market."

But in the words of the British Ambassador there has been "a net benefit" to British producers. They are able to sell in foreign markets at less prices than they can sell in their home markets. It is possible that without the allowance they would not be able to sell in foreign markets at any price. The American consul at Edinburgh reports that the allowance has "enabled distillers and blenders largely to extend their trade abroad" (R. 43). Statistics in the *Encyclopaedia Britannica* show that the amount of spirits distilled in the United Kingdom increased from 37,412,170 proof gallons in the year 1880 to 50,317,908 proof gallons in the years 1906-7, an increase of about 35 per cent. In the same period the amount of spirits exported increased from 1,704,204 proof gallons to 7,341,077 proof gallons, an increase of over 330 per cent. (See Appendix B.)

The American consul reported from Edinburgh that the manufacturing chemists and other users

of neutral spirits, dealers in wines, and those whisky dealers who are not exporters regard the allowance as purely a bounty or grant (R. 43). The only answer to that which the British representatives make is that those traders have no interest in the matter; that probably few of them are aware that there is such an allowance; and that still fewer are acquainted with the grounds on which the allowance is granted (R. 44, 48).

While it may be that outside the fraternity of spirits-producers there are few who know about the allowance, yet there seem to be some who do. The public statutes cannot be concealed. It may be that fiscal reports showing the payments arouse public discussion. It is natural that domestic users and whisky dealers should be interested in the matter—especially so if the exportation of large quantities enables producers to keep the domestic prices at a high level.

That the British Government feels itself under a moral obligation to make it easier for British producers to compete in foreign markets does not change the nature of the allowance.

Bounties granted by a government are never pure donations, but are allowed either in consideration of services rendered or to be rendered, objects of public interest to be obtained, production or manufacture to be stimulated, or moral obligations to be recognized.

*Allen v. Smith*, 173 U. S. 389, 402.

Granting that from the British standpoint the allowance is simply to save the British producer from being placed "in a position of disadvantage as compared with his foreign or colonial competitor" (R. 51), yet (in the language of the Circuit Court of Appeals in *United States v. Hills Bros. Co.*, 107 Fed. 107, 109) "from the standpoint of *other countries*" the allowance is a bounty or grant upon exportation.

Though the intent of the British government is interesting, yet we are more interested in the effect of the British allowance. In *Henderson v. The Mayor*, 92 U. S. 259, 268, Mr. Justice Miller laid down this principle:

In whatever language a statute may be framed, its purpose must be determined by its natural and reasonable effect.

As to the nature of a bounty, this court said in the Russian sugar bounty case (*Downs v. United States*, 187 U. S. 496, 502):

A bounty may be direct, as where a certain amount is paid upon the production or exportation of particular articles, of which the act of Congress of 1890, allowing a bounty upon the production of sugar, and Rev. Stat. sections 3015-3027, allowing a drawback upon certain articles exported, are examples; or indirect, by the remission of taxes upon the exportation of articles which are subjected to a

tax when sold or consumed in the country of their production, of which our laws, permitting distillers of spirits to export the same without payment of an internal revenue tax or other burden, is an example. *United States v. Passavant*, 169 U. S. 16.

The Downs case originated before the Board of General Appraisers. The difference between the scope of "bounty" and "grant" was considered by Judge Somerville, a member of that board, in an elaborate opinion which was later adopted by the Circuit Court of Appeals in *Downs v. United States* (113 Fed. 144, 146). Judge Somerville said:

These cases are cited for the purpose of illustrating the broad and comprehensive meaning of "grant," which differs in many respects from "bounty." While it involves the idea of a favor or benefit conferred by the Government, sometimes of an exclusive character, it does not necessarily embrace the act of appropriating or paying money out of the public treasury. Indeed, the word "grant," in its broad signification, may well include the remission of a tax already levied and assessed by the authority of government. \* \* \* A law enacted by the sovereign power, remitting the tax due by a citizen for a single year or a specified number of years, in consideration of his rendering a service or engaging in an enterprise deemed of advantage to the public,



would unquestionably be construed to be a "bounty or grant," as fully as if the like amount of money had been actually collected and refunded under the technical name of a bounty.

*Downs' case*, G. A. 4912, T. D. 22984.

Petitioners' brief in the Nicholas case seems to attempt (p. 40) to limit the effect of the term "grant" and to contend that it means little more than "bounty." In paragraphs 237 of the tariff act of 1890 (26 Stat. 567, 584) and 182½ of the tariff act of 1894 (28 Stat. 509, 521) relating to countervailing duties on sugar, Congress used only the word "bounty." Section 5 of the tariff act of 1897 (30 Stat. 151, 205) broadened the countervailing duty provision. Therein Congress used the additional verb "bestow" and the additional noun "grant," thus manifesting a purpose to make the provision broad and all-inclusive. The purpose of Congress to cover everything in the nature of a bounty or grant is expressed in the language "shall pay or bestow, directly or indirectly, any bounty or grant," and again, "however the same be paid or bestowed."

The countervailing duty paragraph now under consideration first appeared on our statute books as section 5 of the tariff act of 1897 (30 Stat. 205). Thereunder a countervailing duty was levied on sugar imported from the Netherlands. The assessment was affirmed by the Circuit Court of Appeals in

*United States v. Hills*, 107 Fed. 107.

Thereunder also arose

*Downs v. United States*, 187 U. S. 496

wherein the court affirmed the assessment of a countervailing duty on sugar imported from Russia. The facts in that case and in the cases at bar are not parallel. The Russian bounty was <sup>designed</sup> ~~levied~~ by a most indirect, round-about method under laws which were very complicated and not easily understood. However, the general principles laid down by this court are applicable in the case at bar, and it may not be amiss to make the following quotation (187 U. S. 496, 512) :

It is practically admitted in this case that a bounty equal to the value of these certificates is paid by the Russian Government, and the main argument of the petitioner is addressed to the proposition that this bounty is paid, not upon exportation, but upon production. The answer to this is that every bounty upon exportation must, to a certain extent, operate as a bounty upon production, since nothing can be exported which is not produced, and hence a bounty upon exportation, by creating a foreign demand, stimulates an increased production to the extent of such demand. Conversely, a bounty upon production operates to a certain extent as a bounty upon exportation, since it opens to the manufacturer a foreign market for his merchandise produced in excess of the demand at home. A protective tariff is the most familiar instance of

this, since it enables the manufacturer to export the surplus for which there is no demand at home. If there were no tariff at all, and the expense of producing a certain article at home were materially greater than the expense of producing the same article abroad, there would be none produced, and, of course, none to export. But with the aid of such tariff production would be stimulated, and might become so much greater than the home demand, that a manufacturer would look to foreign markets for his surplus. In the case of Russian sugar the effect of the import duties is much enhanced by the fact that, the supply of free sugar from the home market being limited, the selling price is very remunerative, and each producer has therefore an interest in placing as much sugar as he can on the home market; and as the total amount of free sugar is distributed among all the manufactories in proportion to their entire production, it may become to their interest to export their surplus even at a loss, if such loss can be compensated by the profits on sugar sold in the home market. This would not make a tariff a bounty upon exportation, but a mere incident to its operation upon production. But, if a preference be given to merchandise exported over that sold in the home market, by the remission of an excise tax, the effect would be the same as if all such merchandise were taxed, and a drawback repaid to the manufacturer upon so much as he exported. If the additional bounty paid by Russia upon exported sugar were the result of a high pro-

protective tariff upon foreign sugar, and a further enhancement of prices by a limitation of the amount of free sugar put upon the market, we should regard the effect of such regulations as being simply a bounty upon production, although it might incidentally and remotely foster an increased exportation of sugar; but where in addition to that these regulations exempt sugar exported from excise taxation altogether, we think it clearly falls within the definition of an indirect bounty upon exportation.

The Russian bounty case was summed up in a single sentence in the opinion (187 U. S. 515) :

When a tax is imposed on all sugar produced, but is remitted upon all sugar exported, then, by whatever process, or in whatever manner, or under whatever name it is disguised, it is a bounty upon exportation.

The British allowance is paid directly to exporters upon their exportation of potable spirits. The allowance "by creating a foreign demand, stimulates an increased production to the extent of such demand." The allowance "opens to the manufacturer a foreign market for his merchandise produced in excess of the demand at home."

The controlling factor is the effect or result of the operation of the foreign law. Neither the name ascribed by the foreign government to the payment

nor the method of payment is controlling.

*Myers v. United States*, 140 Fed. 648;  
affirmed *Myers v. United States*, 144  
Fed. 1021;

*Heckendorn v. United States*, 162 Fed.  
141; writ of certiorari denied *Hecken-*  
*dorn v. United States*, 214 U. S. 514.

## VI.

**There has been no long-continued executive construction of the countervailing duty statute, followed by legislative re-enactment, of which petitioners can now avail themselves.**

Though the British allowance was instituted in 1860, yet it was not until 1897 (30 Stat. 151, 205) that the Secretary of the Treasury was empowered to ascertain, determine, and declare the net amount of the bounty or grant. The record indicates that the Secretary of the Treasury did not know of the allowance until he received a copy of the British statute in 1910.

After the enactment of the tariff act of 1897, the State Department instructed consular and diplomatic officers in various foreign countries to furnish information as to bounties granted by the several governments. Copies of the reports received were furnished to the Treasury Department; but among them there was none relating to the United Kingdom of Great Britain and Ireland (pp. 584 et seq., No. 219, December, 1898, Vol. 58 U. S. Consular

Reports). While in a report dated in 1904 the consul at Edinburgh made some reference to the allowance (R. 40), yet it does not appear that the Secretary of the Treasury ever knew of that report.

In March, 1910, the consul requested information whether a countervailing duty was levied upon British whisky imported into the United States (R. 40). In April, 1910, in obedience to instructions (seemingly given at the request of the Treasury Department), the consul transmitted to the State Department copies of various British statutes (R. 40). (The number of the April report and the reference thereto in the report of August 5, 1913, show that the April report was in 1910 and not in 1911.) In June, 1910, he transmitted other information (R. 41).

It appearing to the Secretary of the Treasury "from certain laws of the United Kingdom of Great Britain and Ireland, copies of which have been transmitted to the department by the Secretary of State, that export bounties are paid by that country" on spirits, the Secretary of the Treasury on January 21, 1911, instructed the collection of additional duties under section 6 of the tariff act of 1909 (T. D. 31229).

As the Nicholas brief says (p. 14), this decision "was no doubt due to the despatches" of the consul.

T. D. 31229 was the first ruling by a Secretary of the Treasury upon the effect of the British allowance. It was made while the tariff act of 1909 was in force. There had been no administrative decision

while the tariff act of 1897 was in force; but in 1901 and in 1903, respectively, final decisions had been rendered in *United States v. Hills* (*supra*) and *Downs v. United States* (*supra*) wherein the Supreme Court and a Circuit Court of Appeals had approved the levying of countervailing duties under the act of 1897. In 1901 there had been another decision by the Board of General Appraisers to the same effect (*Bailey's case*, G. A. 5012, T. D. 23325). All those decisions were rendered before the reenactment of the countervailing duty provision as section 6 of the tariff act of 1909 (36 Stat. 11, 85), under which the Secretary's decision was made in January, 1911. That decision was in harmony with prior judicial determinations.

The British ambassador urged the Secretary to reverse himself (exhibits 5 and 6, R. 23-39). On April 18, 1911, the Treasury Department, having considered the arguments advanced by British representatives, concluded that the allowance is not a bounty or grant. Accordingly T. D. 31299 was revoked (T. D. 31490).

The Shaw brief cites no authority for its statement (p. 52) that the Attorney General "approved T. D. 31490 revoking 31,229."

On August 5, 1913, the American consul made a further report concerning the allowance (R. 42); and this report seems to have been forwarded to the Secretary of the Treasury (T. D. 34466). Further information was submitted to the Secretary by the British ambassador (exhibits 8, 9, 10 and 11,

R. 43-51). With a mass of information in hand the Treasury Department "after further careful consideration of the matter" was of the opinion that the allowance is a bounty; and it was ordered that countervailing duties be "reimposed" (T. D. 34466). The treasury decision recognized that the question is one fitted for judicial determination, and instructed collectors of customs to direct the attention of importers to their remedy by way of protest.

Between the revocation of the countervailing duty in 1911 and its reimposition in 1914, the countervailing duty provision had been reenacted in the tariff act of 1913.

The mind questions the soundness of the assertion in the Nicholas brief (p. 16) that from 1897

until 1914, for a period of 17 years, the departmental practice was consistent in viewing this allowance, not as a bounty or grant within the meaning of our tariff laws.

The mind wonders where that brief finds its "long-continued and uniform practice, and legislative reenactment in the face of that practice."

The mind fails to grasp the "striking parallel" which the Nicholas brief finds (p. 15) between the facts in the instant cases and the facts in *Copper Queen Consolidated Mining Company v. Arizona Board*, 206 U. S. 474. In that case a statute had been reenacted after it had "notoriously" received a certain construction in practice for 18 years.



Neither does the mind see that the facts now here are parallel with the facts in *United States v. Midwest Oil Company*, 236 U. S. 459, upon which the Nicholas brief relies. In that case the question was whether the President had power to withdraw public lands from entry under certain statutes. It appeared that during 80 years (without express authority but under a claim of power so to do) the President had made a multitude of Executive Orders which operated to withdraw public land that otherwise would have been open to private acquisition. In the light of the legal consequences flowing from that long continued practice, it was held that the President had power to make the similar order then under consideration.

The countervailing duty provision had been definitely construed and applied by the Treasury Department from 1897 and construed and applied by the courts in 1901 and 1903. In 1911 the Treasury Department hesitated about applying it to British spirits exported from the United Kingdom. The Board of General Appraisers said (R. 21):

So we conclude in the case at bar that paragraph E having been, in our judgment, definitely construed by this board in *Downs* case, *supra*, and by the Supreme Court in *Downs v. United States*, *supra*, it was the construction there given the law which Congress is presumed to have adopted rather than that given it in the brief letter of the Assistant Secretary of the Treasury.

The long-deferred action of the Secretary of the Treasury in ascertaining, determining and declaring the net amount of the bounty or grant paid or bestowed by the Kingdom of Great Britain and Ireland presents no reason why our Government should not now levy and collect the additional duty prescribed by paragraph E, section IV, tariff act of 1913. The failure of an executive department to enforce a statute does not effect a repeal thereof.

*Merritt v. Cameron*, 137 U. S. 542, 551-552.

In *Pacific Creosoting Co. v. United States*, 1 Ct. Cust. Appls. 312, the importer objected to the assessment of duty upon certain metal drums which contained creosote oil. For a number of years some customs officers had been passing the drums free of duty as usual containers, but in due course changed the practice and assessed duty upon the theory that the drums were unusual containers. Judge Hunt, writing the opinion of the court, said, (p. 315) :

Nor can the argument that for years the customs officers at Pacific coast ports failed to tax metal drums prevail, for the reason that under the evidence, as we read it, the practice of not assessing the duty upon metal drums such as are involved in the case under consideration was clearly illegal and therefore cannot be sanctioned without positive violence to the law.

The inconvenience to follow a decision holding that the metal drums are dutiable may

cause annoyance to some importers, but can not be allowed to defeat the text and spirit of the law.

In *Gulbenkian v. United States*, 175 Fed. 860, an action was brought to recover certain alleged illegal duties assessed on certain importations of wools by reason of an alleged improper and illegal mode of invoicing forced on the claimants. In an elaborate and interesting opinion the following appears (p. 866) :

I do not think that years of illegal practice in classifying goods and assessing the duties thereon in any way bars the United States from changing to the legal method.

The Nicholas brief (p. 7) cites several decisions holding that when a statute of doubtful meaning comes up for a judicial construction, long-continued executive construction is to be given weight. Those cases are not in point. The countervailing statute is not of doubtful meaning. The question now before this court is whether there exist facts which bring that statute into operation. This court is not asked to construe paragraph E, but to apply it.

### **Conclusion.**

The judgments of the Court of Customs Appeals should be affirmed.

BERT HANSON,  
Assistant Attorney General.

December, 1918.

**APPENDIX A.**

(T. D. 34466.)

Treasury Department, May 25, 1914.

To collectors and other officers of the customs:

Your attention is invited to T. D. 31229 of January 21, 1911, imposing countervailing duties on certain British spirits equivalent to the export allowances granted by the Government of the United Kingdom of Great Britain and Ireland and to the revocation of that decision in T. D. 31490 of April 18, 1911.

The Secretary of State has transmitted to the department a consular report which furnishes additional information in the matter and the Attorney General has stated that the question of whether the said export allowances are bounties within the meaning of paragraph E of section 4 of the tariff act of October 3, 1913, is one better fitted for judicial determination than for an expression of his opinion.

The department, after further careful consideration of the matter, is of the opinion that the allowances in question (except that on "methylated spirits") constitute export bounties within the meaning of said paragraph of law. Countervailing duties are, therefore, reimposed in regulations as follows:

## REGULATIONS.

*Definitions.*

1. The British commissioners of customs and excise have furnished the American embassy at London with the following definitions:

*(a) Plain British spirits.*

Section 3 of the spirits act, 1880, enacts that—

“Spirits” means spirits of any description and includes all liquors mixed with spirits, and all mixtures, compounds, or preparations made with spirits.

“British spirits” means spirits liable to a duty of excise.

“Plain spirits” means any British spirits (except low wines and feints) which have not had any flavor communicated thereto or ingredient or material mixed therewith.

NOTE.—Low wines and feints are impure spirits, the product of distillation which never leaves the distillery in such state.

*(b) Spirits in the nature of spirits of wine.*

Section 3 of the spirits act, 1880, enacts that—

“Spirits of wine” means rectified spirits of the strength of not less than 43° above proof.

NOTE.—There is no specific definition of “spirits in the nature of spirits of wine,” but

in practice the words are interpreted as identical with the words "spirits of wine," as above defined.

*(c) British compounded spirits.*

Section 3 of the spirits act, 1880, enacts that—

"British compounds" means spirits redistilled or which have had any flavor communicated thereto or ingredient or material mixed therewith.

2. The Bureau of Standards, Department of Commerce, has advised the department that 1 British gallon of British proof spirit (ascertained always with Syke's hydrometer) is equal to 1.2009 United States gallons of spirit, 114.4 per cent United States proof, or 1.374 United States proof gallons.

*Additional duties to be collected.*

3. Collectors of customs shall collect on the following-named articles, when imported directly or indirectly from the United Kingdom of Great Britain and Ireland, additional duties under paragraph E of section 4 of the tariff act of October 3, 1913, equivalent to the export bounties paid by that country, as follows:

(a) On "plain British spirits" and "spirits in the nature of spirits of wine" 3 pence per gallon, computed at hydrometer proof.

(b) On "British compounded spirits" 5 pence per gallon, computed at hydrometer proof.

*Amount of bounty to be certified on invoices.*

4. Consular officers will certify on every invoice of such spirits the exact amount of bounty which each item has received or is entitled to receive from the British Government.

*Importers' remedy by way of protest.*

5. Collectors will direct the attention of importers who may be dissatisfied with the assessment of additional duties hereunder to their remedy by way of protest under the provisions of paragraph N of section 3 of the tariff act of October 3, 1913.

*Time of taking effect.*

6. These regulations will take effect 30 days after date.

(75418) CHAS. S. HAMLIN, Acting Secretary.

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(T. D. 34752.)

Treasury Department, September 4, 1914.

To collectors and other officers of the customs:

The department has received inquiries from collectors as to how certain brands of British spirits

should be classified for the assessment of countervailing duty under T. D. 34466 of May 25, 1914.

Collectors are informed that there is no need for the publication of lists of the brands of British Spirits showing their classification, respectively, as "Plain British" or "compounded" spirits, inasmuch as the British commissioner of customs and excise has stated that but one article, namely, whisky (Scotch, Irish, and all other brands) receives upon exportation from Great Britain the lower allowance of 3d. per gallon, all other spirits not methylated spirits coming under the head of "compounded" and receiving the higher allowance of 5d. upon exportation from Great Britain.

As a general rule this information should be followed, therefore, in classifying British spirits for the purpose of assessing countervailing duty. Where, however, the consul has made a notation on the invoice which indicates an exception to this rule, liquidation should be suspended and the papers forwarded to the department for instructions.

Wm. P. MALBURN, Assistant Secretary.  
(75418.)



## APPENDIX B.

Excerpt from page 803, volume 32, 10th edition, Encyclopaedia Britannica:

The following figures regarding the gallonage, excise duty, exports, etc., need no explanation:

## UNITED KINGDOM.

Year.	Quantity Distilled (Proof Gallon).	Duty Paid (Excise).	Exports (Proof Gallon).	Imports (Proof Gallon).	Remaining in Warehouse (Proof Gallon).
1880	37,412,170	£13,631,785	1,704,204	10,050,467	46,901,437
1885	41,006,486	13,987,472	2,588,078	11,755,518	64,405,817
1890	40,970,295	13,860,002	3,371,396	12,714,049	85,376,937
1895	44,870,357	16,195,664	3,854,102	10,211,068	108,195,402
1900	59,246,277	20,303,147	5,284,611	10,739,106	157,169,968

Excerpt from page 695, volume 25, 11th edition, Encyclopaedia Britannica:

The following figures regarding production, consumption, duty, &c., need no explanation:

## UNITED KINGDOM.

## 1. Statistics regarding Home-made Spirits.

Year.	Total Quantity Distilled (Proof Gallon).	Total Con- sumption of Potable Spirit (Proof Gallon).	Consumption of Potable Spirit Per Head of Population (Proof Gallon).	Exports (Proof Gallon).	Retained for Methylation (Proof Gallon).	Remaining in Warehouse (Proof Gallon).	Duty Paid (Excise).
1885-1896	49,324,875	31,088,448	0.79	4,254,883	3,838,082	114,110,701	£16,380,134
1887-1899	63,437,884	34,334,084	0.85	5,090,290	4,781,369	151,732,539	17,967,142
1889-1901	57,020,847	36,703,728	0.89	5,773,718	5,070,713	161,502,829	20,124,003
1893-1904	51,816,600	34,103,111	0.80	6,334,971	5,054,586	167,155,504	18,667,818
1895-1906	49,214,165	32,486,958	0.75	7,049,798	5,663,429	163,519,957	17,765,352
1896-1907	50,317,908	32,511,316	0.74	7,341,077	6,055,285	161,648,409	17,745,125

vailing duty. It was determined and declared to be necessary under Paragraph E by reason of the allowance under the British legislation of three pence upon plain British spirits and five pence upon British compounded spirits. 23 & 24 Viet., c. 129.

The case is not of broad compass. The act of Parliament referred to above levies a duty upon every gallon of spirits of a certain strength which after certain designated dates were or should be distilled within the United Kingdom or which, having been distilled therein, were on the designated dates in the stock or possession of any distiller or in any duty-free warehouse, and which after the named dates should be taken out for consumption within the United Kingdom.

It is provided that "In consideration of the Loss and Hindrance caused by Excise Regulation in the Distillation and Rectification of Spirits in the United Kingdom" there shall be paid "to any Distiller or Proprietor of such Spirits on the Exportation thereof from a Duty-free Warehouse, or on depositing the same in a Customs Warehouse . . . the Allowance of Twopence per Gallon . . . and to any licensed Rectifier who . . . has or shall have deposited in a Customs Warehouse Spirits distilled and rectified in the United Kingdom the following Allowances; . . . Threepence per Gallon, and on Spirits of the Nature of Spirits of Wine an Allowance of Twopence per Gallon . . ."

Subsequent acts of Parliament repeat the provisions for allowance upon exported spirits, adding some details, and are replete with the regulations and provisions which the legislators thought or experience had demonstrated were necessary. And there is quite an enumeration of warehouses and their purposes which, however necessary from the standpoint of the law, happily is not necessary to our consideration of the questions in the case, although counsel describe them and use them in display of the options which

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## Opinion of the Court.

it is contended the law gives to a distiller—that is, to export, warehouse, or sell the spirits or use them under conditions which would or would not result in an allowance. We do not find it necessary to go into such confusing considerations. The question in the case is more direct, and is whether the three pence and five pence paid on account of export from the United Kingdom is the bestowal “directly or indirectly” of a “bounty or grant upon the exportation of any article or merchandise from such country,” to use the words of Paragraph E.

Looking only at the paragraph and judging from the first impressions of its words, the problem presented would seem to be without difficulty. There is paid to an exporter of spirits from the United Kingdom the sum of three or five pence a gallon, as the case may be, and the instant conclusion is that the sale of spirits to other countries is relieved from a burden that their sale in the United Kingdom must bear. There is a benefit, therefore, in exportation, an inducement to seek the foreign market. And thus it would seem, if we regarded the substance of things, that the condition of the application of Paragraph E obtains.

Counsel, however, resist this view in somewhat lengthy and minute arguments, only the basic propositions of which we can give. They dwell especially upon the purpose of the British act and the differences, not only actual, as they contend, but recognized in the administrative and legislative parlance of this country, between the words allowance, bounty, drawback and grant. In support of the first contention—that is, the purpose of the British act—it is urged that the allowance provided for is not a “bounty” upon exportation, but “compensation” to the distiller and rectifier for costs due to excise restrictions. In other words, that the allowance is not a premium on exportation, but the remission or reimbursement of the expense of manufacture to accommodate the “pe-

culiar conditions and necessities" of the British fiscal policy. In confirmation of this view it is said that not all British spirits when exported get the allowance, but only those that are warehoused in a certain specified way, and that, besides, the allowance is also paid when certain spirits go into domestic consumption. And the British Ambassador is quoted as saying of the allowances that they "do not even compensate the loss they are intended to reimburse, as is abundantly proved."

It is hence asserted that the condition of the application of Paragraph E—that is, a premium bestowed on an exportation from another country—is absent and that, besides, the paragraph is of limited scope, the word bounty not being used in its most comprehensive sense, and that there is a wide difference between an "indirect bounty" and "indirectly paying a bounty," and that for an indirect bounty the paragraph does not provide. Counsel attempt to justify the distinction and illustrate it by the citation of the example of many acts of Congress by which "indirect" bounties were legislated and also by the comments of legislators in discussion of the purpose and effect of the use of the words "allowances," and "rebates," and "drawbacks." And *United States v. Passavant*, 169 U. S. 16, 23, is quoted for a distinction between "the word 'bounty' as differentiated from the word 'drawback' in tariff parlance" and the "shades of meaning which Congress must have had in mind in enacting Paragraph E and provisions *in pari materia*." In further support of their distinctions counsel cite the executive practice of this country, and adduce the decisions of this and other courts to show that such practice is a useful resolvent of the meaning of words and of legislative intention.

We appreciate the strength of the argument, but the circumstances are but aids to persuasion; they do not compel it. Every new statute is individual and presents its own problem. That before us does, and, as we have

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said, looking at its words alone, has no uncertainty of purpose. Whenever any country "shall pay or bestow, directly or indirectly, any bounty or grant upon the exportation of any article or merchandise," there shall be levied and paid upon it, upon importation, in addition to the regular duty, an additional one "equal to the net amount of such bounty or grant, however the same be paid or bestowed." The statute was addressed to a condition and its words must be considered as intending to define it, and all of them—"grant" as well as "bounty"—must be given effect. If the word "bounty" has a limited sense the word "grant" has not. A word of broader significance than "grant" could not have been used. Like its synonyms "give" and "bestow," it expresses a concession, the conferring of something by one person upon another. And if the "something" be conferred by a country "upon the exportation of any article or merchandise" a countervailing duty is required by Paragraph E.

There can be, therefore, but one inquiry: Was something—bounty or grant—paid or bestowed upon the exportation of spirits? Counsel's answer we have given; ours is different. They dwell upon the meaning of one word and the necessary adjustments of the British revenue legislation; we regard all of the words, the fact of payment and the event—the fact that the grant is made at the time of exportation and only upon exportation (of course, we mean of the spirits destined for the United States)—the event, that the spirits may be sold cheaper in the United States than in the United Kingdom, and necessarily there may be that aid to their competitive power. We do not think that it is a repelling answer to say that they are sold here at the same price that they would be sold for in the United Kingdom if the latter imposed no tax, that is, sold here as if they had not been taxed at all, and therefore sold not below their natural cost. This is mere speculation of the effects of a different situation. We have the

fact of spirits able to be sold cheaper in the United States than in the place of their production, and this the result of an act of government because of the destination of the spirits being a foreign market. For that situation Paragraph E was intended to provide. What legislation some other situation might require or receive we are not called upon to conjecture.

Our conclusion is supported, we think, by *United States v. Passavant*, *supra*, a case from which counsel have adduced some argument. An importation of goods from Germany was the subject of the decision. That country imposed a tax upon merchandise when sold by the manufacturer thereof for consumption or sale in the markets of Germany. Upon exportation of the merchandise the tax was remitted. The remission was called "bonification of tax" as distinguished from being refunded as a rebate. The merchandise could be purchased in bond for exportation in the principal markets of Germany at the net invoice price and without paying the so-called German duty. The merchandise with which the case was concerned was so purchased.

Upon importation of the merchandise it was determined by the collector and customs appraiser that its value was the net invoice value with the German duty added. This ruling was contested by the importer and the Board of General Appraisers reversed it. The Circuit Court, to which the case had been carried, affirmed the decision of the Board of General Appraisers. Upon appeal to the Circuit Court of Appeals that court asked of this court whether the German duty had been lawfully included by the collector and customs appraiser in their estimate of the dutiable value. We answered in the affirmative, and said, through Mr. Chief Justice Fuller, that "the laws of this country in the assessment of duties proceed upon the market value in the exporting country and not upon that market value less such remission or ameliora-

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tion as that country chooses to allow in accordance with its own views of public policy." And this conclusion was reached upon the effect of the remitted tax and not upon the word used to designate it. In other words, the decision was not determined by a consideration of costs of manufacture or their reimbursement nor by the requirements of the policies of the exporting country. It regarded the fact and effect of the remitted excise.

*Downs v. United States*, 187 U. S. 496, is a like example, and direct and indirect bounties are illustrated. As an instance of the former the amount paid upon the production of sugar under the Act of Congress of 1890 is adduced, and also the "drawback" (the word of the statute is used) upon certain articles exported; as instances of the latter, that is, of indirect bounties, the remission of taxes upon the exportation of articles which are subject to a tax when sold or consumed in the country of their production is given, and, as another example, the laws permitting distillers of spirits to export the same without payment of an internal revenue tax or other burden.

We consider further discussion unnecessary and the judgment of the Court of Customs Appeals is

*Affirmed.*